
Friday
November 26, 1982

Federal Register

Selected Subjects

Accounting

Securities and Exchange Commission

Administrative Practice and Procedure

National Credit Union Administration

Anchorage Grounds

Coast Guard

Animal Diseases

Animal and Plant Health Inspection Service

Animal Drugs

Food and Drug Administration

Antibiotics

Food and Drug Administration

Aviation Safety

Federal Aviation Administration

Bridges

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Classified Information

Federal Communications Commission

Color Additives

Food and Drug Administration

Communications Common Carriers

Federal Communications Commission

Credit Unions

National Credit Union Administration

Elections

Federal Election Commission

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Conservation and Renewable Energy Office

Fisheries

National Oceanic and Atmospheric Administration

Food Additives

Food and Drug Administration

Food Stamps

Food and Nutrition Service

Historic Preservation

National Park Service

Loan Programs—Energy

Rural Electrification Administration

Marine Safety

Engineers Corps

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 274

[Amdt. No. 211]

Food Stamp Program; Administrative Flexibility Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces fraud and error in the Food Stamp Program and provides more flexibility to the State agencies in administering the program. This rule requires food stamp households to furnish the social security numbers (SSN's) of all household members in accordance with the 1981 Food Stamp Amendments. Also, this rule contains a provision of the 1982 Food Stamp Amendments that eliminates the requirement that State agencies comply with Federal standards with regard to points and hours of certification and issuance. Other provisions in this rule concern verification, public comment, training, mailing of Authorization to Participate (ATP) cards, and staggered issuance. These rules give State agencies the authority to verify any information included on the food stamp application and require that individuals with questionable citizenship be ineligible for participation in the program until their citizenship is verified.

EFFECTIVE DATE: This action is effective on November 26, 1982. State agencies shall implement the new SSN provisions for new applicants no later than February 1, 1983 and convert the current caseload at recertification or when the case is otherwise reviewed, whichever occurs first. The citizenship provisions must be implemented on or before April

1, 1983. All other provisions shall be implemented at State agency discretion.

FOR FURTHER INFORMATION CONTACT: If you have any questions, contact Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, Alexandria, Va. 22302, 703-756-3429.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291. The rule will not result in annual economic impacts of more than \$100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, the rule has been classified as "nonmajor."

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354). Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. This rule implements several provisions which affect food stamp certification, issuance, and operational issues. The provisions will allow State agencies to implement direct ATP pick-up issuance systems; will mandate that State agencies require each household member to provide an SSN as a condition of eligibility; will expand the State agencies' options to verify any information included on the food stamp application; and will mandate that household members whose citizenship is in question be ineligible until proof of citizenship is obtained. In addition, this rule will eliminate the Federal requirements in the area of points and hours and allow greater administrative flexibility in the area of training and the public comment component of the State Operating Guidelines. These provisions do not represent major changes in certification, issuance, or operational policy and should have no significant impact on State and local social service agency or issuance agency workload, staffing needs or paperwork.

This regulation does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

Introduction

The Department is concerned with minimizing possibilities for fraud and error in the Food Stamp Program and with lessening the administrative burden currently placed on State agencies. With this in mind, the Department re-examined the provisions concerning verification, training, public comment requirements on State operations and the mailing of ATP cards. The requirement that SSN's for all household members be collected was contained in Section 1327 of the 1981 Food Stamp Amendments (Pub. L. 97-98), while the 1982 Food Stamp Amendments (Pub. L. 97-253) eliminated the stringent requirements of points and hours (Section 167). This final rulemaking will revise the policy in these areas. In developing this rule, the Department focused on the development of procedures that are responsive to participant need and State agency flexibility.

An explanation of the rationale and purposes for this rule was provided in the preamble to the proposed rulemaking, published at 46 FR 14160, April 2, 1982. Therefore, this preamble deals only with significant changes from the proposed rulemaking.

A total of 86 commenters sent in comments and suggestions on the proposed Administrative Flexibility rules.

Public Comment Provisions in the State Operating Guidelines

Current rules require State agencies to provide the public with an opportunity to comment on overall program operations. Public comment is required every four years beginning with the State agency's 1982 fiscal year. The regulations also specify that waivers to deviate from program requirements requested by State agencies are subject to comment prior to submission to FNS. The comment period for a waiver may be dropped with prior FNS approval if an emergency situation exists. The rules specify that State agencies must solicit comments in at least one of the following methods: Their State's Administrative Procedures Act (APA's);

publication of a summary of the waiver or general program operations for public comment; or State-wide public hearings. The proposed rule would give State agencies the administrative flexibility to solicit comments as State laws require as the individual State agency believes would be useful.

A total of 37 commenters specifically addressed the public comment provision. Sixteen of the commenters were supportive while 21 were opposed to the provision. The commenters supporting the proposed change cited several reasons for their positive response. Several said a Federal provision requiring public comments on State operating guidelines is redundant since many States have an APA. One commenter said that interested parties can register comments at anytime, whether or not formally solicited. Another said the appropriate forum for effective comments is at the federal level. Still another commenter said Food Stamp Program materials are already open to the public. Commenters opposed to the provision cited various reasons for their opposition. Five commenters challenged our premise that the current public comment provisions are burdensome since the next comment period on State overall operations is not due till the State's 1986 fiscal year. Another reason cited for opposing the proposed provision was that the proposal would encourage growth of a closed bureaucracy especially if State agencies did not have to adhere to their Administrative Procedures Act (APA). One commenter felt that a built-in mechanism to require public comment offers the only opportunity for the local community and their representatives (particularly in States without an APA) to provide comments and suggestions as to the operation of the Food Stamp Program.

The Department believes that giving State agencies the administrative flexibility to solicit comments as State laws require or as the individual State agency believes would be useful will not prevent the public from learning how State agencies are operating the Food Stamp Program. Those State agencies without their own APA's can solicit public comment through less formal contacts, such as welfare rights organizations and public interest groups. Also § 272.1(d) of the federal regulations requires that the public be allowed to examine regulations, plans of operations, State manuals and Federal procedures which affect the public.

The Department is revising the final rule to answer the concern of the commenter who feared a closed

bureaucracy by making clear that the language does not permit State agencies to avoid the requirements of their APA's. State agencies without APA's will need to solicit comments as they feel necessary.

Further, paragraph (a)(5) of § 272.3 is removed as State agencies may now determine their own needs for preparing and providing staff with procedures for obtaining public comment.

Training

The Food Stamp Act of 1977, as amended, requires training for certification personnel. The current regulatory provisions expanded the statutory training requirement to include fair hearing officials, performance reporting system (PRS) reviewers, and others who prescreen or provide other services to applicants or the public. Current rules are very specific as to the contents of training programs. Additionally, public participation is required at formal State training sessions. Finally, the rules require that the contents of training programs be reviewed by FNS on a semi-annual basis. The proposed rule would only require training for food stamp eligibility workers, fair hearing officials and Performance Reporting System (PRS) reviewers. The contents of training programs and the public participation provision would not be regulated.

Forty-seven commenters addressed the proposed training provision. There were 13 general supportive letters and 26 general opposition letters. The commenters supporting the proposed provision welcomed the flexibility given to State agencies in determining their own training needs. One State agency stated that this flexibility means that available resources can be used to meet State/local needs rather than to comply with Federal rules.

The commenter further observed that training is and will continue to be a priority. One State agency, although supportive, felt the training requirements could be further deregulated. It recommended that the rule solely reflect the Act's mandate on training certification workers.

Fourteen of those opposing the proposed provision were surprised that training would be curtailed in light of the high error rate, USDA's objective to curtail fraud, and the numerous program changes. There were two areas of the proposed training provision that received the most negative responses: the proposed categories of personnel requiring training and the deletion of public attendance at training sessions. Most commenters objecting to the training proposal preferred to leave the

current provision intact as far as the type of personnel requiring training.

The Department retains the training provision as proposed. These rules acknowledge State agencies' staff and budget constraints. The final rule will allow State agencies to determine their training staff needs, content of training, public attendance at training sessions, and, to a degree, personnel training requirements. The rule reduces the amount of detailed regulations that now exist and allows increased flexibility to State agencies. State agencies will continue to be responsible for developing well-designed training programs.

The deletion of the requirement that the public be allowed to attend training sessions is not meant to discourage or preclude such attendance. Rather, the deletion of this requirement is meant to remove Federal involvement from an operational area more properly left to State agencies. The Department expects that State agencies will continue to allow public participation at training sessions if, in the view of State agencies, such participation is beneficial.

Point and Hours

Current regulations provide minimum standards for State agencies to use in determining the locations and hours of operation of the issuance services made available in each State. The proposed rule would have established general authority for allowing exceptions to these minimum requirements. Public Law 97-253 (Food Stamp Act Amendments of 1982, enacted September 8, 1982) amended the Food Stamp Act of 1977 to eliminate the requirement that State agencies comply with Federal standards with regard to points and hours of certification and issuance. The final rule implements this change by removing 7 CFR 272.5. However, the provision of that section requiring State agencies to assist households comprised of elderly or disabled members to obtain coupons has been retained by moving it to 7 CFR 272.7(n)(3) and 274.1(a).

Verification

The proposed rule included a number of changes designed to help State agencies eliminate fraud and abuse by increasing flexibility in the area of verification. The following discussion addresses the public comment on these proposed changes and explains the provisions of the final rule.

Optional verification. Current rules place a number of restrictions on State agencies regarding what factors they

may elect to require households to verify. At certification, the State agency's optional verification is limited to liquid resources of loans, dependent care costs, household size, and any other factors for households meeting the State agency's error prone profile. At recertification, the State agency may elect to verify income, medical expenses and actual utility expenses which have changed by \$25 or less. (Changes in source or amount exceeding \$25 must be verified.) The agency does not have the option to mandate verification of other factors.

The proposed rule would remove the restrictions on optional verification. State agencies would be granted the option to require verification of any of the information on the application, both at certification and recertification. In addition, the proposed rule would delete the requirement that State agencies get prior approval from FNS to exercise optional verification on a project area basis rather than statewide.

The Department received roughly the same number of comments supporting and opposing this change. Commenters supporting the change agreed that it would help to reduce fraud, abuse, incorrect issuances, and error rates.

Some of the commenters who opposed the change maintained that it would lead to a variety of abuses by State agencies or eligibility workers. Potential abuses mentioned by these commenters include harassment, undue delays in processing, barriers to participation, arbitrary requirements, and discrimination. Four commenters argued that the change would undermine the Program's uniform national eligibility standards. A few others contended that it would prove cost-inefficient and would unduly burden eligibility workers.

The Department does not agree with the commenters who maintained that this change would lead to abuses by State agencies and eligibility workers. The rule provides the State agency with the authority to mandate verification of any information on the application on a statewide or project area basis. The provision does not extend authority to eligibility workers to impose special verification requirements on a case-by-case basis. This sharply reduces any potential for abuse or discrimination by eligibility workers. The required processing time frames, combined with the 10 day minimum allowed for households to provide verification upon request, ensure that barriers and delays in recertification are not generated. Finally, the rule specifically prohibits State agencies from establishing verification procedures which result in discrimination based on race, religion,

ethnic background, or national origin. The rule also prohibits imposition of standards which target groups such as migrant farmworkers or American Indians. The Department will continue to enforce these provisions to guarantee that statewide or project area verification requirements do not result in discrimination.

The Department does not believe that the rule will undermine the Program's uniform national standards. The eligibility and benefit level standards will remain uniform, as will processing time limitations. The only change is that State agencies will be more able to adapt verification requirements to the characteristics of their caseloads and to ensure accuracy in information collected during certification. The Department does not agree with the commenter who asserted that the change would prove cost-ineffective or that it would unduly burden eligibility workers. Because State agencies share in administrative funding, they share the Department's interest in efficient and effective verification. The Department expects that State agencies will target their verification options to areas where significant abuse occurs.

The Department believes that State agencies will make good use of their increased flexibility to require verification. The Maryland Department of Human Resources commented that, "No doubt, FNS will receive comments opposing the regulations * * * on the basis of their potential abuse by diminishing services to clients and prolonging and complicating the verification process. However, Maryland is fully committed to using these regulations in a balanced attempt to serve both client and program needs." The Department believes that this commitment is shared by most State agencies. Therefore, the proposed optional verification provisions are retained in this final rule.

Definition of questionable information. The current regulations require State agencies to verify questionable information that would affect a household's allotment or eligibility. The regulations detail what shall be considered questionable information. Only if the definition has been met will information be considered questionable, and therefore be subject to verification.

Like the current regulations, the proposed rule would have required verification of questionable information that would affect a household's eligibility or allotment. However, the proposed rule removed the stipulations regarding what may be considered questionable. This change was proposed

to provide State agencies and eligibility workers with increased flexibility consistent with expanded optional verification.

Commenters who favored this change agreed with the Department that it would help to reduce error rates, incorrect issuances, fraud, and abuse. One commenter approved of the proposal as a "logical outgrowth of expanded verification." Several argued that the restrictions on what can be considered questionable have hampered verification efforts and prevented State agencies from uncovering fraud and abuse. One commenter requested that the final rule explicitly extend authority to State agencies to require verification of questionable information on a case-by-case basis. Another commenter recommended that State agencies establish standards for what constitutes questionable information. Still another commenter recommended that the regulations return to the "prudent person" concept (included in earlier regulations) for determining what may be considered questionable. The "prudent person" concept was based on the premise that the eligibility worker is able to use his or her own good judgement, if necessary, in eligibility factors.

Commenters who opposed the change argued that it would lead to delays, harassment, arbitrary and punitive verification, and discrimination based on race and language. A few commenters contended that the change left too much to the discretion of eligibility workers. Others argued that the change would create barriers to participation or lead to the invasion of the applicant's privacy.

The Department is convinced that the vast majority of eligibility workers would not misconstrue or wrongly apply this change so as to abuse the rights of applicants. However, the Department recognizes the commenters' concern that leaving complete discretion to eligibility workers to determine what is questionable, with no federal or State guidance, could result in unnecessary demands for verification.

To address this concern, the final rule requires that State agencies establish guidelines to be followed by eligibility workers in determining what information should be considered questionable. The rule also provides that these guidelines not be based on race, religion, ethnic background, or national origin, and that they not target groups such as migrant farmworkers or American Indians for special verification. These guidelines would be subject to review by FNS during

management evaluations. These provisions will ensure that consistent standards are applied within States and will prevent verification requirements based on bias or whim. At the same time, the provisions remain consistent with the basic objective of this rule change, which is to increase State administrative flexibility.

Citizenship. Current rules require State agencies to allow participation for two months by household members whose citizenship is questionable and unverified, if the household is otherwise eligible and efforts are being made to obtain the needed verification. If verification is not provided within two months, the member becomes ineligible and the member's resources and prorated income are considered available to any remaining household members.

The proposed rule required verification of questionable citizenship prior to issuance of any benefits. The proposal also required that until verification is obtained, the resources and prorated income of the member whose citizenship is in question would be considered available to any remaining household members. These proposed changes concerning verification of questionable citizenship are consistent with current requirements pertaining to verification of alien status.

A number of commenters supported this change, stating that it would reduce fraud, abuse, error rates, and administrative complexity. Several commenters approved of the consistency with the provisions regarding alien status.

A number of commenters argued that this change would impose serious hardship on applicants. Several commenters asserted that the rule would be applied in a discriminatory manner, imposing special hardship on Spanish speaking people, people who speak English with a foreign accent, minorities, and migrants. A few added that the hardship would be aggravated for migrants because they frequently travel in the job stream without documentation of citizenship. Eight commenters contended that the requirement would cause financial hardship for residential drug and alcohol addiction treatment programs, as their residents often have no documentation of citizenship. These commenters argued that the change would delay food stamp certification, and that treatment programs could not afford to admit many addicts without immediate issuance of benefits.

The proposed changes regarding verification of questionable citizenship are retained in the final rule. In making this change, the Department is removing

the special treatment currently given questionable claims of citizenships. All other eligibility factors for which verification is deemed necessary, including claims of eligible alien status, must be satisfactorily documented prior to certification. The Department does not believe that discrimination, harassment, or abuse will result from applying this general rule to the verification of citizenship.

It should be noted that the rule does not impose mandatory verification of citizenship: It only requires verification of questionable claims of citizenship. The Department believes that the changes incorporated in the final rule concerning what constitutes questionable information (described above) addresses the commenters' concerns regarding potential harassment, abuse, and discrimination. Those new rules require that sufficient safeguards to ensure equal treatment be provided under the State agencies' criteria for what may be considered questionable. The criteria must not result in discrimination based on race, religion, ethnic background or national origin, and they must not target groups such as migrant farmworkers or American Indians for special verification. State agency guidelines cannot rely on a surname, accent, or appearance which seems foreign to find a claim to citizenship questionable. Nor can the guidelines rely on a lack of English speaking, reading, or writing ability as grounds to question a claim to citizenship.

State agencies may wish to provide special guidance to eligibility workers regarding grounds for considering claims to citizenship as questionable. State agency guidelines must satisfy the nondiscrimination requirements. The following list suggests standards for considering claims of citizenship.

1. The claim of citizenship is inconsistent with statements made by the applicant or with other information on the application or previous applications.
2. The claim of citizenship is inconsistent with information received from another source.
3. The individual does not have a social security number.

The Department recognizes that some drug and alcohol addiction treatment centers may experience financial difficulties as an indirect result of this change. However, it is not the purpose of the Food Stamp Program to guarantee the financial security of treatment centers, but to provide assistance to eligible households. Residents of treatment centers should be just as able as other applicants to provide

verification of citizenship, and therefore should be subject to the same requirements.

A few commenters recommended changes regarding the forms of verification of citizenship that are accepted. Two commenters recommended that SSN's be accepted as adequate verification. Because SSN's are regularly provided to people who are not United States citizens, the Department rejected the recommendation. Two other commenters recommended tightening the requirements further by deleting the provision allowing verification in the form of a statement signed by a United States citizen, under penalty of perjury, declaring that the individuals in question is a citizen. The Department rejected this recommendation because it believes that rule provides applicants with a needed measure of flexibility regarding the ways in which they may verify citizenship. However, the Department wants to emphasize that current regulations allow this form of verification only if other forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available.

Several other commenters suggested modifications in and exemptions from the requirements. One recommended that the rule provide for retroactive benefits (to the date of application) when verification is provided outside of the normal time frames. Another commenter recommended that an exception be provided for persons applying for citizenship. Another recommended that State agencies be allowed to certify persons making good faith efforts to provide verification. Finally, one commenter suggested that individuals with unverified citizenship should simply not be counted as household members, and their income and resources should be ignored. The Department rejected each of these recommendations because they would undermine the basic purposes of the change—to simplify administration, reduce fraud and abuse, and make the citizenship requirements consistent with those regarding verification of alien status.

Collateral contacts. Current regulations preclude State agencies from designating a particular individual to be used as a collateral contact in the verification process. The proposed rule would have extended to State agencies the authority to designate a collateral contact when the household fails to designate one or designates one which is unacceptable to the State agency. The

proposed rule would have provided that a collateral contact may be considered unacceptable if the contact cannot be expected to provide accurate verification. The preamble to the proposed rule stated that households objecting to the State agency designee would have the option to request a fair hearing.

Nearly half of the commenters who addressed this change strongly supported it. These commenters argued that it would help to improve Program integrity and the quality of verification and to reduce fraud, abuse, and error rates.

Commenters opposing the change argued that it would cause applicants to experience embarrassment, harassment, and discrimination. Two commenters contended that the change would undermine the Program's uniform national standards. One commenter argued that the change would lead to costly and inefficient verification. Several argued that the change would violate the nondisclosure provision of Section 11(e)(8) of the Food Stamp Act of 1977 as amended.

The final rule retains the provision extending to State agencies the authority to designate collateral contacts. The Department does not agree with the criticism that this change will lead to mistreatment of applicant households, nor that it will undermine uniform standards. Under this rule, the household retains the right to name a collateral contact. Only if the household fails to name a collateral contact, or names one who is not acceptable to the State agency, will the new provisions come into effect. The Department is convinced that State agencies will reject an applicant's designees only when there is reason to doubt that the contact will provide accurate verification. State agencies will not direct their limited administrative resources to identifying and making collateral contacts unnecessarily.

Commenters suggested modification in two aspects of the proposed change. Their recommendations are discussed below:

1. Two commenters recommended that the State agency's action in rejecting a household's designee and selecting another contact not be subject to a fair hearing. The Department has rejected this recommendation because it would conflict with the requirements of the fair hearing regulations (§ 273.15). However, the Department will consider the recommendation during the development of any changes in the fair hearing regulations in the future.

2. One commenter recommended that the State agency be allowed to contact

its designee without providing prior notification to the household. Another commenter recommended an explicit requirement that the State agency notify the household prior to making the contact in order to allow the household opportunity to request a fair hearing. Still another commenter recommended that the rule include a provision specifically requiring prior notification to the household in order to allow the household opportunity to withdraw its application.

The Department believes that it is important that prior notice be provided to the household when the State agency intends to contact an individual other than one named by the household. Providing prior notice to the household protects the applicant's privacy and ensures that the nondisclosure provision is not violated. In most cases, providing prior notification will entail no additional workload. Eligibility workers usually discuss verification problems, like identification of a collateral contact, during the interview. The Department expects that in almost all cases, the eligibility worker and the applicant will agree to an alternative contact (or other form of verification) during the interview. When this occurs, no other notification would be needed, and any need for a fair hearing should be avoided.

The Department recognizes great merit in the recommendation that applicants be allowed to withdraw their applications before the contact is made, and has incorporated the recommendation in the final rule. Program integrity requires that State agencies act on verified information. However, the basic choice remains with the household regarding whether or not to allow State agency access to collateral contacts as sources of verification. When the household prefers that the contact not be made, and can provide no other acceptable verification, the household may choose to withdraw its application.

To provide State agencies with the needed flexibility and authority to obtain accurate verification, and at the same time to protect the privacy of applicants, the final rule makes the following provisions. State agencies are required to notify the household prior to making a collateral contact with an individual designated by the State agency. At the time of this notification, the State agency shall inform the household that it has the option to consent to the contact, supply some other form of mutually acceptable verification, or withdraw its application. If the household refuses to take one of the options, the application shall be

denied in accordance with the normal procedures for failure to verify information (§ 273.2(g)(3)).

Case file requirements. Current regulations contain detailed requirements regarding the documentation which must be maintained in case files. The regulations establish basic guidelines by requiring documentation of eligibility, ineligibility, and benefit level determinations in sufficient detail to allow a reviewer to determine the reasonableness and accuracy of the determination. Current regulations also include detailed requirements for documentation justifying any determination that information is questionable, any request for an alternative form of verification, and any rejection of a household designated collateral contact.

The proposed rule retained the general documentation guidelines, but deleted the detailed requirements for documentation justifying special verification actions. This change was proposed in order to be consistent with the proposed changes in the optional verification provisions. There are no specific documentation requirements for the exercise of the optional verification provisions. Several commenters supported the change, arguing that the current requirement imposes unnecessarily burdensome case file requirements.

A number of commenters opposed the change, contending that it would reduce eligibility worker accountability and encourage the imposition of unnecessary and unfair verification requirements. The Department does not agree with these commenters. There is no reason to expect the deletion of the detailed special case file provision for these verification procedures to have such effects. The Department believes that it serves no useful purpose to continue requiring documentation to justify actions which are clearly within the normal discretion of the State agency. What is important in a case file is documentation that shows that determinations of eligibility, ineligibility, and benefits are correct. Therefore, the proposed change is retained in the final rule.

Error prone profiles. Current regulations require that State agencies get prior approval from FNS for their error-prone profiles. To be consistent with other proposed changes increasing State agency flexibility, the proposed rule deleted the prior approval requirement.

One commenter argued that this change is contrary to the intent of the statute, which provides for use of error

prone profiles "as approved by the Secretary." The Department wishes to point out that the change does not mean that error prone profiles are no longer subject to review and approval. Error prone profiles, like other verification standards used by State agencies, will be reviewed and approved by FNS during management evaluations.

Miscellaneous changes. The final rule makes conforming changes in language in § 273.2(i)(4)(ii), which deals with the use of collateral contacts in expedited service cases. The change was mistakenly omitted from the proposed rule. The change is made simply to be consistent with other changes described above.

Expanding the Collection of Social Security Numbers (SSN's)

Section 1327 of Pub. L. 97-98 amended the Food Stamp Act of 1977 to require, as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their SSN (or numbers, if they have more than one).

This section of the proposed regulations received twenty-five comments. Seventeen of these comments concerned the first change which requires as a condition of eligibility for participation in the Food Stamp Program that each household member furnish to the State agency their SSN. The remaining comments concerned the second change which gives State agencies the option of either requiring applicants to obtain SSN's at the State agency or allowing the State agency to follow the current rule.

The former group of commenters were almost evenly divided between those supportive of and those opposed to the provision. Most of the opposing commenters felt that the current 90 day time period allowed for awaiting receipt of an SSN is excessive. Two of the supportive commenters also recommended a shorter time period. Another issue on which comments were received pertained to households' responsibility to apply for SSN's. One State agency recommended that household members without SSN's be required to apply for one prior to certification and that households receiving expedited service be required to apply for an SSN prior to the second issuance rather than prior to certification. A State agency recommended that when good cause is determined for household members who have not received SSN's within 90 days, they should be eligible for an additional 90 day extension. The proposed rule would not have changed the current rule

which does not limit the time of the good cause extension.

The Department feels that requiring household members without SSN's to apply for an SSN prior to certification would not place undue hardship on the household. This procedure would encourage faster receipt of SSN's, faster application for SSN's, and earlier wage matching which improves the prevention and detection of fraud. This requirement is included in final regulations. The household receiving expedited service will adhere to current regulations in § 273.2(i)(4)(i) regarding furnishing an SSN to the State agency. That section states that household members entitled to expedited service are required to furnish or apply for an SSN after they have received their first allotment but before their second issuance.

In order to be certified for the Food Stamp Program, household members need to furnish their SSN before certification or apply for one. These household members without SSN's, must furnish them within 30 days of the first day of the first full month of participation. The Department has learned that the Social Security Administration (SSA) is now able to get SSN's at a faster rate to applicants than in the past. Virtually, all applicants (approximately 99 percent) will receive their social security card in 30 days or less. The Department, therefore, has decided that for certification to continue for a household, members certified without SSN's must furnish them to the State agency within 30 days of the first day of the first full month of participation.

One commenter believes that the Department should give a time limit for providing SSN's even when good cause exists in order to conduct an effective and timely wage match on newly certified cases. Currently, the good cause provision of SSN's could be delayed permanently if the SSN was not received within a specified time. The Department is adopting an absolute limit by giving household member's an additional 30 days to furnish an SSN, which allows household members to continue to participate provided documentation exists of their applying for an SSN. It is the Department's position that the 30 day time limit for applying for an SSN and the 30 day good cause extension, if good cause exists, will result in equitable treatment of program participants and provide adequate time to receive an SSN from SSA. The Department wants to point out that the 30 day time limit for furnishing an SSN and the good cause extension is less than the current 90 day standard for

furnishing an SSN to the State agency. State agencies may modify these timeframes in order to conform to the Monthly Reporting Retrospective Budgeting regulations.

In view of the regulatory change that establishes a good cause provision time limit, this final rule makes conforming changes to the failure to comply section (§ 273.6(c)). The final rule states that an individual without an SSN and without good cause at the end of the 30 day period following the first day of the first full month of participation will be ineligible to participate in the program until that individual complies.

Eight comments were received on the section of the proposed regulations giving State agencies the option of either requiring applicants to obtain SSN's at the State agency or allowing the State agency to follow the current rule. The current rule offers to applicants who do not have SSN's the options of either applying for SSN's at Social Security Administration offices or at State agency offices. Only one commenter opposed this provision, stating that application should be made at the State agency only. However, this is an option provided by the proposed rule. The Department made no change and incorporated the proposed language into final regulations.

Direct Pick-up of ATP Cards

The proposed rule allows the development of a broader range of ATP delivery systems by removing the requirement that ATP's be mailed to participants. The proposed rule further stated that State agencies should use an alternative issuance system only when State agencies are having problems with fraudulent duplicate issuances.

This section of the proposed regulations received thirty comments. Most of the comments were supportive. Commenters opposing the provision believed that the option to offer direct delivery of ATP cards should be at the discretion of the State agency, without having to justify to FNS that fraudulent duplicate issuances are occurring. They stated that State agencies currently have the flexibility to use an HIR card issuance system and a direct mailing of coupon system without any justification.

The Department has rewritten the final regulations to allow State agencies to develop alternative ATP delivery systems at their discretion. The State agencies should give adequate notification to households of a change in issuance systems.

As mentioned in the preamble to the proposed rule, State agencies should make an issuance system uncomplicated

for households and should consider the distance of the issuance outlet from the recipients, the hours of operation of the issuance outlet and the needs of the handicapped recipients.

Staggered Issuance

The proposed rule removes the standards and guidelines for staggering the issuance of ATP's and coupons to recipients. The State agencies would have the flexibility to determine when, during the certification month, authorization cards and coupons would be mailed to recipients.

Thirty-nine comments were received on this section of the proposed regulations. Twenty-one of the commenters opposed the rule. Their major concern was that recipients who will be asked to revert to an issuance cycle later in the month may not have enough food to cover the transition period that would occur in the first month of an issuance date change.

The Department became aware that the staggered issuance proposal raised concerns in the context of Monthly Reporting and Retrospective Budgeting (MRRB) systems. Therefore, the issue of staggered issuance will be addressed in the final MRRB regulations.

Alaska

Subsequent to publication of the proposed rule, the Department realized that conforming amendments would be necessary in the rule establishing procedures for program administration in Alaska. So that the Alaska provisions will be consistent with the final rule, those conforming amendments have been incorporated into this rulemaking.

Implementation

The implementation section proposed that State agencies implement those regulations pertaining to questionable citizenship no later than the first of the month 120 days after publication in a final rulemaking. All other provisions would be implemented anytime after 30 days following publication in final form.

This section received 11 comments. Nine of the commenters requested including in this section an implementation date for the requirement of an SSN for each person participating or applying for participation in the program. The other commenters supported the section as written.

The Department agrees with the commenters that an implementation date for providing SSN's should be given in the implementation section. Therefore, State agencies must implement the new SSN provisions for new applicants no later than February 1, 1983 and convert the current caseload at

recertification or when the case is otherwise reviewed, whichever occurs first. The citizenship provisions must be implemented on or before April 1, 1983. All other provisions will be implemented at State agency discretion. The Department feels that this implementation schedule will provide State agencies adequate time to prepare for implementation.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

Parts 271, 272, 273 and 274 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.6 [Amended]

1. In § 271.6, paragraph (a)(1), the reference to § 272.7 is revised to read § 272.6.

2. In § 271.7, paragraph (g) is revised as follows:

§ 271.7 Allotment reduction procedures.

(g) *Issuance services.* State agencies must have issuance services available to serve households receiving restored or retroactive benefits for a prior, unaffacted month.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.6—272.8 [Redesignated as §§ 272.5—7]

1. In Part 272, the table of contents section, the entry for § 272.5 is removed, and the entries for §§ 272.6, 272.7 and 272.8 are redesignated as §§ 272.5, 272.6 and 272.7, respectively.

2. In § 272.1, paragraph (g)(5) is revised to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.* * * *

(5) *Amendment 211.* State agencies shall implement the new Social Security Number (SSN) provisions for new applicants no later than February 1, 1983 and convert the current caseload at recertification or when the case is otherwise reviewed, whichever occurs first. The citizenship provisions must be implemented on or before April 1, 1983. All other provisions shall be implemented at State agency discretion.

3. In § 272.1, paragraph (g)(12) is removed and reserved for future use.

4. In § 272.3 paragraph (a)(5) is removed, paragraphs (a)(6) and (a)(7) are redesignated as paragraphs (a)(5) and (a)(6) respectively, paragraphs (c)(5) and (c)(6) are removed, paragraphs (c)(7) and (c)(8) are redesignated as paragraphs (c)(5) and (c)(6) and paragraph (d) is revised. The revision reads as follows:

§ 272.3 Operating guidelines and forms.

(d) *Public Comment.* State agencies shall solicit public input and comment on overall Program operations as State laws require or as the individual State agency believes would be useful.

5. In § 272.4, introductory text to paragraph (d) is removed, (d)(1) is revised and (d)(3) is removed. The revisions read as follows:

§ 272.4 Program administration and personnel requirements.

(d) *Training.*—(1) *Minimum requirements.* (i) The State agency shall institute a continuing training program for food stamp eligibility workers, hearing officials, and performance reporting system reviewers. Sufficient training shall be provided to these people prior to their initial assumption of duties and, subsequently, on an as-needed basis.

(ii) The State agency shall provide sufficient staff time to ensure that the minimum training requirements are met.

§ 272.5 [Removed]

§§ 272.6, 272.7, and 272.8 [Redesignated as §§ 272.5, 272.6, and 272.7]

6. Section 272.5 is removed in its entirety, and §§ 272.6, 272.7 and 272.8, are redesignated as §§ 272.5, 272.6 and 272.7, respectively.

7. In newly designated § 272.7, paragraphs (b), (e) and (n) are revised and paragraph (o) is removed. The revisions read as follows:

§ 272.7 Procedures for program administration in Alaska.

(b) *Applicability.* The regulations established in this section except for paragraphs (f) *Hotlines* and (j) *Resources* of this section shall apply only in those areas of Alaska which are designated by FNS as "rural". All regulations not specifically modified by this section shall remain in effect. The State agency, in consultation with FNS, shall establish the criteria for designating areas of the State as "rural" taking into consideration such factors as population concentrations, weather and road conditions, the risk to the health or safety of applicants in traveling, and the regularity of mail service. The State agency shall, in consultation with FNS, determine those areas that meet the rural criteria. The criteria for designating rural areas and the designated areas shall be identified in the Alaska State Plan of Operation as an addendum to the Program and Budget Summary Statement.

(e) *Training.* The State agency shall institute a continuing training program for fee agents. Sufficient training shall be provided to these people prior to their initial assumption of duties and, subsequently, on an as-needed basis. The State agency shall provide sufficient staff time to ensure that the minimum training requirements are met.

(n) *Issuance services.* (1) With the approval of FNS, coupons may be mailed on a quarterly or semiannual basis to certain rural areas of Alaska when provisions are not available on a monthly basis. The decision to allow the distribution of coupons in this manner will be made on an annual basis, separate from the determination as to which areas of Alaska are to be designated as rural areas. These areas shall be listed in the State's Plan of Operation in the same section as the rural area designations. The State agency shall advise households that live in rural areas where quarterly or semiannual allotments are authorized. If, as the result of the issuance of quarterly or semiannual allotments, food coupons are overissued or underissued, the State agency shall process claim determinations and restore lost benefits.

(2) The State agency may choose among a wide variety of issuance methods to fulfill the issuance service

needs of the low-income people in the State. The methods include, but are not limited to, the use of contract issuance agents such as banks, post offices, credit unions, etc.; government issuance offices; itinerant issuance offices; mobile issuance units; and mail issuance. Mail issuance may be used to comply with any or all of the requirements specified below.

(3) Those households comprised of elderly or disabled members which have difficulty reaching an issuance office to obtain their regular monthly allotments shall be given assistance in obtaining their coupons. The State agency shall assist these households by arranging for the mail issuance of coupons to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. In § 273.2—

(a) In introductory paragraph (e)(2), the phrase "as provided in § 272.5" is removed from the second sentence.

(b) In paragraph (f)(1)(v)(B), the word "only" is removed from the last sentence.

(c) In paragraph (f)(2), the introductory paragraph and (f)(2)(ii)(B) are revised.

(d) Paragraph (f)(3) is revised.

(e) Paragraph (f)(4)(ii) is revised.

(f) Paragraph (f)(5)(ii), (f)(6), and (f)(8)(i)(C) are revised.

(g) In paragraph (i)(4)(i), the fourth and sixth sentences are revised. The fifth sentence is removed.

(h) Paragraph (i)(4)(ii) is revised.

The revisions read as follows:

§ 273.2 Application processing.

(f) Verification. * * *

(2) *Verification of questionable information.* The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision. Procedures described below shall apply when information concerning one of the

following eligibility requirements is questionable.

(ii) Citizenship. * * *

(B) The member whose citizenship is in question shall be ineligible to participate until proof of U.S. citizenship is obtained. Until proof of U.S. citizenship is obtained, the member whose citizenship is in question will have his or her income, less a prorata share, and all of his or her resources considered available to any remaining household members as set forth in § 273.11(c).

(3) *State agency options.* (i) In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any of the other factors which affect household eligibility or allotment level. Such verification may be required State-wide or project areawide, but shall not be imposed on a selective, case-by-case basis on particular households.

(A) The State agency may establish its own standards for the use of verification, provided that, at a minimum, all questionable factors are verified in accordance with paragraph (f)(2) of this section and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in this paragraph, including verification resulting from a State's error-prone profile, shall not apply in those offices of the Social Security Administration (SSA) which, in accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options.

(B) If a State agency opts to verify a deductible expense and obtaining the verification may delay the households certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed

without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. If the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense, the household shall be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with paragraph (h)(3) of this section. If the household's would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(ii) *Error-prone profiles.* The State agency may require additional verification of other eligibility factors as indicated by error-prone household profiles developed and based on statistically representative data derived from the State agency's quality control review, audits, or other special reviews in accordance with § 275.15(a)(2). These expanded verification requirements would be applied only to those particular eligibility factors and/or households identified as being error-prone, and would apply only on a uniform basis statewide or in one or more project areas. In addition, if the State agency's error-prone household profiles demonstrate that verification of particular eligibility factors (other than gross nonexempt income, declared alien status, and social security numbers) mandated under § 273.2(f)(1) is not needed for particular categories of households, the State agency may appropriately reduce mandatory verification. The State agency shall not implement verification policies that result in prohibited discrimination based on race, religion, ethnic group, or national origin. For example, an error-prone profile may not be used to target particular racial minorities, or groups such as migrant farmworkers or American Indians, to more intensive verification than other households. Error-prone profiles shall be used in a

selective manner in modifying verification requirements.

(4) *Sources of verification.* * * *

(ii) *Collateral contacts.* A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third party verification. If the State agency designates a collateral contact, the State agency shall not make the contact without providing prior written or oral notice to the household. At the time of this notice, the State agency shall inform the household that it has the following options: (A) Consent to the contact, (B) provide acceptable verification in another form, or (C) withdraw its application. If the household refuses to choose one of these options, its application shall be denied in accordance with the normal procedures for failure to verify information under paragraph (g)(3) of this section. Systems of records to which the State agency has routine access are not considered collateral contacts and, therefore, need not be designated by the household. Examples are the Beneficiary Data Exchange (BENDEX), the State Data Exchange (SDX) and records of another agency where a routine access agreement exists (such as records from the State's unemployment compensation system).

(5) *Responsibility for obtaining verification.* * * *

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate

another collateral contact, or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

* * * * *

(8) *Verification subsequent to initial certification.* * * *

(i) *Recertification.* * * *

(C) Other information, changed or unchanged, may be verified at recertification. However, any information which is questionable shall be verified in accordance with paragraph (f)(2) of this section. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

* * * * *

(i) *Expedited Service.* * * *

(4) *Special procedures for expediting service.* * * *

(i) * * * Households entitled to expedited service will be asked to furnish a social security number for each person or apply for one for each person before the first full month of participation. Those households unable to provide the required SSN's or who do not have one prior to their next issuance shall be allowed 30 days from the first day of the first full month of participation to obtain the SSN, in accordance with § 273.6(a)(2). * * *

(ii) Once an acceptable collateral contact has been designated, the State agency shall promptly contact the collateral contact, in accordance with the provisions of paragraph (f)(4)(ii) of this section. Although the household has the primary responsibility for providing other types of verification, the State agency shall assist the household in promptly obtaining the necessary verification.

* * * * *

§ 273.3 [Amended]

2. In § 273.3, the phrase "in accordance with the provisions of § 272.5," is removed from the first sentence.

3. In § 273.6, remove the following language in the title of paragraph (b), "18 years and over and children receiving income." Paragraph (a), introductory language of (b)(2), first sentence of (b)(2)(i), and paragraphs

(b)(2)(ii), (c), (d) and (e) are revised and read as follows:

§ 273.6 Social Security Numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or inability to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained in accordance with paragraph (c) of this section. The member that has applied for an SSN shall be allowed to participate for 30 days from the first day of the first full month of participation while awaiting receipt of the SSN.

(b) *Obtaining SSN's for food stamp household members.*

(2) For those individuals required to provide an SSN who do not have one, the State agency shall act as follows. A State agency with an enumeration agreement with SSA shall either require the individual to apply for an SSN through the State agency or shall allow the individual to choose between applying through the State agency or at SSA. A State agency without an enumeration agreement shall require the individual to apply for an SSN at SSA.

(i) If an individual applies through the State agency, the State agency shall complete the application for an SSN, Form SS-5.

(ii) If an individual applies at the SSA, the State agency shall inform the household where to apply and what information will be needed. The State agency shall suggest that the household member ask for proof of application from SSA, in the event his or her application is not processed within the 30 day time period described in paragraph (a) of this section. SSA normally uses the Receipt for Application for a Social Security Number, Form SSA-5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(c) *Failure to comply.* If the State agency determines that a household member(s) required to provide an SSN as a condition of eligibility has refused to provide it, then the individual without the SSN shall be ineligible to participate in the Food Stamp Program. If, at the end of the 30 day period allowed in

paragraph (a) of this section, the State agency determines that a household member required to provide an SSN has failed without good cause to obtain an SSN, the individual without the SSN shall be ineligible to participate. The disqualification applies to the individual(s) for which the SSN is not provided and not to the entire household. The earned or unearned income of an individual disqualified from the household for failure to comply with this requirement shall be handled as outlined in § 273.9(b)(3) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to provide the State agency with an SSN, the State agency shall consider information from the household member, the Social Security Administration and the State agency (especially if the State agency was designated to send the SS-5 to SSA and either did not process the SS-5 or did not process it in a timely manner). Documentary evidence or collateral information that the household has applied for the number or made every effort to supply SSA with the necessary information shall be considered good cause for not complying timely with this requirement. If the household member(s) can show good cause why an SSN has not been obtained in a timely manner, they shall be allowed to participate for an additional 30 days. If the household member(s) applying for an SSN has been unable to obtain the documents required by SSA, the State agency caseworker should make every effort to assist the individual(s) in obtaining these documents.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

PART 274—ISSUANCE AND USE OF FOOD COUPONS

1. In § 274.1, paragraph (a) is revised to read as follows:

§ 274.1 State agency issuance responsibilities.

(a) *Basic issuance requirements.* Each State agency is responsible for the timely and accurate issuance of coupons to eligible households in accordance with these regulations. Those households comprised of elderly or disabled members which have difficulty reaching an issuance office to obtain their regular monthly coupon allotments shall be given assistance in obtaining their coupons. State agencies shall assist

these households by arranging for the mail issuance of coupons to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means. The State level agency shall establish an issuance and accountability system which will insure that (1) only certified households receive benefits; (2) coupons are accepted, stored, and protected after delivery to receiving points within the State; (3) program benefits are timely distributed in the correct amounts; and (4) coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS.

2. In § 274.2, paragraph (e)(5) is revised and reads as follows:

§ 274.2 Issuance systems.

(e) *ATP issuance.*

(5) The State agency may mail the ATP to the household or may use an alternate method of ATP delivery, except when the ATP is handled as specified in paragraphs (g) or (h) of this section. When the ATP is mailed to the household it shall be mailed in a first class, nonforwarding envelope. The State agency may also use certified mail for ATP delivery, and shall use an alternate method of ATP delivery for households which report two losses of ATP's through the mail within a 6 month period.

(91 Stat. 958 (7 U.S.C. 2011-2029))

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: November 18, 1982.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82-32255 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 553]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period November 26–December 2, 1982. Such action is needed to provide for orderly marketing of fresh

navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. The Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona navel orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982-83. The marketing policy was recommended by the committee following discussion at a public meeting on September 21, 1982. The committee met again publicly on November 23, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is weak.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is

necessary to effectuate the declared policy of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

1. Section 907.853 is added as follows:

§ 907.853 Navel Orange Regulation 553.

The quantities of navel oranges grown in Arizona and California which may be handled during the period November 26, 1982, through December 2, 1982, are established as follows:

- (1) District 1: 828,000 cartons;
- (2) District 2: Unlimited cartons;
- (3) District 3: 72,000 cartons;
- (4) District 4: Unlimited cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 24, 1982.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service
[FR Doc. 82-32618 Filed 11-24-82; 12:02 pm]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins

Note.—This document originally appeared in the *Federal Register* for Wednesday, November 24, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Rural Electrification Administration.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A—REA Bulletins by revising REA Bulletin 105-5, "Financial Forecast—Electric Distribution Systems." This revision formalizes REA's acceptance of financial forecasts prepared using a standard computer program in lieu of manually prepared forecasts. The computer program's design has been tested extensively and found acceptable by both REA and its borrowers. Use of the computerized forecast reduces the burden of work required both of applicants in preparing and revising their forecasts, and that of REA field staff members who assist the applicants, and those who review the completed forecasts as part of the loan making process. The financial forecast, formally adopted by the applicant's board of directors, presents their

financial plans, indicates their loan needs, and demonstrates loan feasibility to REA and other lenders. It also serves as a long-range planning tool in the management of these rural electric utilities.

EFFECTIVE DATE: October 8, 1982.

FOR FURTHER INFORMATION CONTACT:

Charles R. Weaver, Director, Electric Loans and Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-1900. The Final Regulatory Impact Statement describing the options considered in developing the final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0572-0072.

REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). This final action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A-95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Background.—The prior revision of this bulletin was November 26, 1973. REA has a continuing need to assess borrower loan fund requirements and their financial feasibility. This formalized document submitted to REA in support of loans helps to assure REA that each borrower is committed to a reasonable, prudent plan that will allow it to achieve REA program objectives and repay its REA loan as agreed. While there are many factors influencing the quality of forecasting done by borrowers, the automated system

contributes to the quality of forecasts by eliminating mathematical errors as well as by making it easier for managers to keep their forecasts current. These benefits should be permanent. REA considered options:

1. Continue to require that all forecasts be prepared using the Standard REA Forms 325 a-k. This was considered an unnecessary and frivolous requirement putting an undue burden on the applicant when a computer prepared equivalent is available.

2. Another option would be for REA to prepare its own forecast for loan purposes. This would add workload to REA's field staff and duplicate efforts borrowers would carry on for their own internal financial management planning.

A Notice of Proposed Rulemaking was published in the *Federal Register* on November 20, 1981, Volume 46, Number 224, page 57057. However, no public comments were received in response to the notice.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Electric utilities, Loan programs—energy.

PART 1701—[AMENDED]

7 CFR Part 1701, Appendix A—REA Bulletins, is hereby amended by revising REA Bulletin 105-5, "Financial Forecast—Electric Distribution System."

Dated: October 8, 1982.

Jack Van Mark,
Acting Administrator.

[FR Doc. 82-32091 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket 82-061]

Animals Destroyed Because of Brucellosis; Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the payment of indemnity for animals destroyed because of brucellosis. This action is needed to ensure that owners of affected bison herds who participated in the brucellosis eradication program will not suffer disproportionate losses compared to owners of affected cattle herds and to ensure that adequate indemnity, within budgetary constraints,

is paid without endangering the effectiveness of the brucellosis eradication program. The intended effect of this action is to gain the cooperation of the bison herd owners by establishing an indemnity program for bison affected with or exposed to brucellosis. This action is also intended to eliminate overcompensation of cattle owners by returning to a flat rate indemnity system, thereby encouraging cattle owners to rid their herds of brucellosis.

DATES: Effective November 26, 1982. Comments must be received on or before January 25, 1983.

ADDRESS: Comments to Deputy Administrator, VS, APHIS, USDA, Federal Building, Room 805, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5961.

FOR FURTHER INFORMATION CONTACT: Dr. A. D. Robb, VS, APHIS, USDA, Federal Building, Room 805, Hyattsville, MD 20782, 301-436-5961.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This interim rule has been reviewed in conformance with Executive Order 12291 and has been determined not to be a "major rule" as defined in E. O. 12291. Based on information compiled by the Department, it has been determined that this action will have an annual effect on the economy of less than one hundred million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; will not have a significant adverse effect on competition, employment or investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Emergency Justification

Dr. Billy G. Johnson, Acting Director, National Brucellosis Eradication Program, Veterinary Services, Animal and Plant Health Inspection Service (APHIS), has determined that an emergency situation exists which warrants publication of this interim rule without opportunity for public comment at this time. Based on administration proposals and Congressional action to date, it is anticipated that funds available for Brucellosis eradication in FY 83 will be cut. In addition, the interim rule is needed in order to halt the current overly high outlay of appropriated funds via indemnity payments which generally overcompensate owners of affected cattle. This high outlay of funds

endangers the success of the brucellosis eradication program, which must rely on these same monies. This is because both indemnity and other funds for the brucellosis program are one appropriation, and therefore, overly high expenditures for one purpose takes money needed by other parts of the program.

In addition, affected bison not currently eligible for indemnity, are creating an increasing threat to the health of cattle herds in States which could otherwise qualify for Class Free status. This situation needs to be alleviated as soon as possible by allowing the payment of indemnity for bison, thereby encouraging the elimination of these reactor bison as a disease source.

Finally, as bison are being included in the indemnity program, provisions must be made to identify them, as cattle are identified, so that proper records can be kept to support indemnity payments. These provisions are needed as soon as possible to allow bison indemnity payments to begin.

In addition, a provision to prohibit indemnity payments unless all reactors in the herd are removed is required immediately to halt the expenditure of funds when it does not further the success of the brucellosis eradication program. At present, some claims are made for animals from herds which still contain reactors, which can spread disease. Therefore, the payment of these claims serves no useful purpose to the program.

For all of these reasons any delay in the implementation of this interim rule will severely undermine producer cooperation in the National Cooperative State-Federal Brucellosis Eradication Program and impair its effectiveness.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency interim action is impracticable, unnecessary and contrary to the public interest, and good cause is found for making this emergency interim action effective less than 30 days after publication of this document in the *Federal Register*. Comments have been solicited for 60 days after publication of this document, and this emergency interim action is scheduled for review so that a final document discussing comments received and any amendments required can be published in the *Federal Register* as soon as possible.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This is because the bison herds comprise less than 0.01 percent of livestock herds in the United States, that is, an estimated 500 to 1,000 herds and less than 10 percent of those herds are affected with brucellosis. Also, the change from indemnity rates that vary with the market to a flat rate will affect less than one percent of the cattle herds in the United States, that is, an estimated 15,000 cattle herds from which animals are removed and destroyed because of brucellosis of those herds. Only an estimated 1 percent, or 150, would be depopulated in any given year. The other 99 percent of cattle herds would only be affected in that individual reactors would be destroyed.

In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this interim rule has been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background Information

Brucellosis is a contagious, infectious, and communicable disease which affects animals and man. It is caused by bacteria of the genus *Brucella*. A National Cooperative State-Federal Brucellosis Eradication Program to eliminate brucellosis from cattle, bison, and swine in the United States is being carried out in each of the various States. Tools being used to eradicate brucellosis in various States are as follows: Testing of cattle, bison, and swine herds for brucellosis; identification and destruction by slaughter of infected and exposed animals; and the payment of indemnities to owners of cattle and swine destroyed because of brucellosis pursuant to the regulations in 9 CFR Part 51.

In the last decade raising bison as a domestic animal has grown from being merely the hobby of a few ranchers keeping a few head of bison on small acreage, to being a business. Reliable data is not available on the number of bison farms. However, estimates range from 500 to 1,000 herds in the United States.

One major problem in the bison business is that suppliers of breeding bison have themselves had brucellosis

affected herds. As any animal from an affected herd may spread the disease to its new herd, sales of breeding stock have created new brucellosis affected bison herds. As with cattle and swine herds affected with brucellosis, the cooperation of the herd owner is essential to eradicate brucellosis in the herd. The bison herd owner is currently discriminated against when he is required to follow the same disease eradication procedures as cattle and swine herd owners, but is not paid indemnity, which would partially reimburse him for the breeding animals slaughtered as brucellosis affected and provide an incentive for prompt removal of diseased bison from the herd.

Indemnity is primarily paid to an owner of affected animals to encourage the herd owner to cooperate in the timely removal of infected animals from his herd or in the case of herd depopulation, to remove a foci of infection in an otherwise clean area and thereby prevent transmission of brucellosis to nearby susceptible herds.

In 1980 and 1981 brucellosis indemnity regulations were changed to calculate an indemnity that varies with the market values for slaughter and replacement. This was accomplished by amending Part 51 on June 27, 1980, (45 FR 43678); February 23, 1981, (46 FR 13673); and October 16, 1981, (46 FR 50930). These amendments changed brucellosis indemnity payments from being payments merely for timely removal of a diseased animal to a way to aid the herd owner in replacing his diseased animals with disease free animals.

Numerous problems have plagued the brucellosis indemnity program since June 27, 1980. For example, reliable data on replacement values for all except dairy cattle was not developed as expected. Also, overcompensation unavoidably occurred in some locations making it profitable for herd owners to maintain the disease in the herd. Comments have been received from Federal officials and State officials from a number of States, and numerous industry officials expressing concern with overpayments. They have requested a flat rate system be reinstituted for all classes of cattle. Two States have already requested that indemnity payments in their States be made at flat rates similar to those being promulgated by this document. Eradication of brucellosis is the goal of the program. However, the financial incentive to induce individual herd owners to be disease free has caused an intolerable drain on appropriated funds, to the point where the true goal of the

program—eradication—is being jeopardized.

To correct these problems in the indemnity program, the Department is reestablishing flat rates for brucellosis indemnity. Assessment of livestock values indicates that reinstitution of the rates in effect prior to June 27, 1980, with two exceptions, would be adequate to encourage timely removal of infected and exposed cattle and bison. One exception is the nonregistered dairy cow. Values of these animals rose rapidly in 1978 and 1979, but rates in effect in 1980 reflected values of 1977. Therefore, nonregistered dairy cattle indemnity would be raised to \$250 from \$150. Values have stabilized during 1980, 1981, and 1982, and the indications are that \$250 would provide the necessary incentive for timely removal of affected nonregistered dairy cattle.

Although the role in the transmission of brucellosis of the exposed female calf under 6 months of age nursed by a reactor dam is not fully demonstrated, sufficient knowledge does exist to indicate that voluntary removal for slaughter is a worthwhile goal. Therefore, the present flat rate of \$50, which has worked better than the 1980 rate of \$25, is retained for such calves.

Analysis of Alternatives

Two primary goals are the function of this action: (1) Adding bison to the species of animals eligible for brucellosis indemnity payments; and (2) establishing a rate system for indemnity payments which will encourage herd owners to rid their herds of brucellosis, without financially endangering the brucellosis eradication program.

Two options to Goal 1 were considered:

- A. Leave the regulations as they are, applicable only to cattle and swine;
- B. Add bison at a flat rate per head indemnity.

Option A was not selected since it is not responsive to the problem of inequitable treatment of the bison industry vis-a-vis the cattle industry, which has arisen since raising bison has expanded and developed from primarily hobby operations to big business.

Option B was selected since preliminary studies reveal that the difference between slaughter value and breeding value in bison is similar to the difference between those values in nonregistered beef cattle. Therefore, the same flat rate indemnity can be expected to provide the same incentive for timely removal of affected bison.

Several options to Goal 2 were also considered:

A. Leave the regulations as they are without changes;

B. Reestablish flat rate indemnity with the intent of encouraging cooperation and the timely removal of affected cattle.

Option A was not selected since the problems would only worsen with time.

Option B was selected since conservation of appropriated funds is imperative in order not to jeopardize the effectiveness of the brucellosis eradication program and since the flat rate system worked well for many years prior to 1980.

Cost-Benefit Analysis

Brucellosis in cattle and bison is caused by infection of these species by *Brucella abortus*. Brucellosis in swine is caused by *Brucella suis*. Brucellosis in goats is caused by *Brucella melitensis*. All three organisms cause brucellosis in humans. All are capable, under certain conditions, of transmission to the other species. *Brucella melitensis* is no longer present in the United States. To eliminate the health and economic ravages of brucellosis from the United States of America, *Brucella abortus* and *Brucella suis* must also be eliminated.

The economic impact for the livestock owner may approach 20-40 percent loss of productivity in affected herds. Milk production in dairy herds is reduced. The reproductive cycle in an affected animal can be lengthened by 25 percent, resulting in fewer calves. Spontaneous abortions also increase, again resulting in fewer calves. Calves which are born are weak and stunted. Finally 10-15 percent of affected animals may be rendered permanently sterile. The incidence of brucellosis in humans is now very low and found primarily in farm workers, slaughterhouse workers, and Cooperative State-Federal Brucellosis Program workers. However, brucellosis in affected humans is a debilitating disease. In a few cases brucellosis becomes chronic, progressing from onset as a severe flu-like disease to recurring malarial-like disease, eventually leading to arthritis, heart valve disease, and, in some individuals, severe depression. Because it mimics so many other diseases, diagnosis is often missed.

An eradication program by USDA in cooperation with the States is in operation to eliminate both *B. abortus* and *B. suis*. The recent growth in raising bison as domesticated animals has raised an economic problem not heretofore recognized. Bison owners are required to follow the same procedures to eliminate brucellosis from their herds as are cattle owners. Yet under the present regulations governing payment

of indemnity, bison owners cannot claim indemnity, as can cattle and swine owners, and this causes them to suffer unfair economic losses.

There are definite benefits to including bison in the indemnity program. Without bison indemnity, there is no incentive for reactors to be disposed of in a timely manner. This results in increased chances of exposure to infection for domestic cattle. The availability of indemnity would encourage herd owners to destroy infected animals. In addition, the greatest numbers of domestic bison are in States having zero infection or less than 2.5 infected herds per 1,000 and where the transmission of brucellosis to domestic cattle can be expected to result in herd depopulation with indemnity. Indemnity payments for only 200 nonregistered beef animals would equal the total maximum expected cost for bison indemnity for 1 year. Indemnity paid for even fewer numbers of dairy or registered cattle would equal this cost level. In addition, the bison problem would continue to exist with no chance of relief.

The cost of adding bison to the indemnity section of the cooperative program would be small. Based on statistics concerning bison found infected during Fiscal Years 1980 and 1981, it is anticipated that owners of only 200 bison would need to be indemnified per year. At the rate of \$50, the cost would be \$10,000.

To summarize, the annual cost of the proposed bison indemnity program is estimated at \$10,000 per annum. The benefits would be reduced need for cattle indemnity, reduced exposure to brucellosis by cattle and humans, and an advance in eliminating brucellosis as an economic and public health threat.

To reestablish flat rate indemnity for cattle would result in tangible savings to the program. The estimated savings for nonregistered beef cattle annually is \$1½ million. Nonregistered dairy cattle indemnity is estimated to be \$2 million less. An additional savings would come from indemnity for registered cattle at an estimated \$2½ million. Total estimated savings is \$6 million. Intangible benefits would be a renewed incentive in some sections of the country for herd owners to rid their herds of infection by not only timely removal of reactors, but by following other management practices known to aid in eliminating the disease from herds. These are the sections where overcompensation occurs under the current regulations, thereby discouraging herd owners from freeing their herds of brucellosis. These intangible benefits would have cost

reduction benefits as well, as fewer reactors would have to be indemnified and herds would be freed of the disease sooner, thereby reducing testing expenses.

Regulations

The title of Part 51 which currently reads "Cattle Destroyed Because of Brucellosis", is amended to change the word "cattle" to "animals." Not only does Part 51 already have provisions for indemnifying swine as well as cattle, but this document adds "bison."

Part 51 deletes, along with all references to it, footnote 2, which refers to average fair market replacement values. Any reference to such values is removed. Footnote 3 is renumbered 2, along with all references to it, and is amended to remove references to sections within Part 51 which are removed by this interim rule. In addition, footnotes 4 through 7, and all references to them, are renumbered 3 through 6 respectively.

Section 51.1(n), "Herd Depopulation" is amended to clarify wording, to add "or bison" after the word "cattle" to reflect the intent to include bison herds as eligible for "herd depopulation," and to state clearly that nonpregnant heifers may be disposed of to quarantined feedlots without indemnity in lieu of "immediate slaughter." Such heifers are sometimes more valuable for feedlot purposes than for slaughter purposes. Permitting such movement brings more money to the owner, reduces overall indemnity for the Department, and at the same time empties the farm of all cattle. Quarantined feedlot cattle must all be slaughtered on leaving the quarantined feedlot so the risk of exposure from these heifers is extremely remote. Such disposal therefore benefits both the owner and the Department while at the same time advances the eradication program.

Section 51.1(u) "Herd Known to be Affected", is amended to make it clear that a "herd known to be affected" is a herd which has had a brucellosis reactor and which is still quarantined by the State. The finding of a reactor makes the herd a "herd known to be affected". Program standards require the State to quarantine such a herd. The designation as a "herd known to be affected" continues until the herd qualifies for and is released from quarantine by the State animal health official.

Section 51.1(v) "Animals", is amended to include bison. This is needed to account for the fact that bison are being added to the indemnity program.

Current § 51.1(cc), "average fair market replacement value", (dd)

"average fair market slaughter value", and (ee) "actual salvage value" are removed as they are not needed under the flat rate indemnity procedures. Also, paragraph (ff) is renumbered (cc).

In § 51.3, "Payment to owners for animals destroyed", § 51.3(a), is amended to reestablish language and rates used prior to June 27, 1980, with the exception of increasing to \$250 the rate for nonregistered dairy cattle, increasing to \$50 the rate for exposed female calves, and making bison eligible for indemnity. The need for this amendment to Part 51 was discussed previously in this supplementary information section.

In § 51.5, "Identification of Animals to be destroyed because of brucellosis," subsection (b) is amended to insert "and bison" following the word "cattle" wherever it appears. Bison are required to be identified in the same manner as cattle. Section 51.5(a) refers to the time limit for identification of animals. Section 51.5(a) is amended by adding a provision for the Deputy Administrator to extend the time limit when Acts of God prevent or delay identification. This would be consistent with § 51.6, which already allows for such a time extension in the case of Acts of God which prevent or delay slaughter or destruction of animals. Finally, § 51.5 is amended to provide that official seals applied to vehicles transporting exposed animals from herds scheduled for depopulation to slaughter, may only be removed by a Veterinary Services representative, State representative, accredited veterinarian, or by other persons authorized for this purpose by a Veterinary Services representative. This precludes tampering with such shipments and possible spread of brucellosis.

Section 51.6, "Destruction of Animals; time limit for destruction of animals", is amended to add a subsection (b) for bison. Current subsections (b) and (c) are redesignated (c) and (d), respectively. Bison are frequently slaughtered in small custom slaughtering establishments not subject to Federal or State inspection. It is not intended by this action to require slaughtering procedures which are not normal to the domestic bison producing industry. The amendment would recognize usual slaughtering methods by providing that bison can be sold under permit to a State or Federal slaughtering establishment approved by the Deputy Administrator for the purpose, or sold to a stockyard approved by the Deputy Administrator for sale to such a slaughter establishment, or that the Deputy Administrator may approve such

other bison slaughtering establishments as may be deemed necessary.

Sections 51.7 and 51.8 are removed as they are no longer necessary with flat rate indemnity. As stated in present footnote 3, which is renumbered 2, the maximum rate of indemnity would be paid for all animals as long as funds are available, the State or area is not under Federal quarantine, the State requests payment of Federal indemnity, and the State does not request a lower rate. Sections 51.9, 51.10, 51.11 and 51.12 are redesignated as §§ 51.7, 51.8, 51.9, and 51.10, respectively. New section § 51.7 does contain some important guidelines for determining eligibility for registered indemnity, and pertinent wording is added to the new § 51.7 "claims for indemnity" as a new subsection (b). The current wording is designated as § 51.7(a).

Section 51.9, "Claims not allowed", is amended to add a new subsection (g), to provide that no claims will be paid if any known reactors remain in the herd. This condition is designed to halt the occurrence of herd owners destroying only some of their reactors, leaving the others in the herd, where they pose a continuing threat of infection. This practice defeats the purpose of the entire brucellosis eradication program, and of the indemnity program specifically. Therefore, APHIS believes it must be stopped.

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Indemnity Payments, Brucellosis.

For the reasons set forth in the preamble, Part 51, title 9, code of Federal Regulations is amended as follows:

1. The title is amended to read:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

2. In § 51.1, footnote 2, and all references to it, and paragraphs (cc), (dd), and (ee) are removed; paragraph (ff) is renumbered (cc); and paragraphs (n), (u), and (v) are revised to read as follows:

§ 51.1 Definitions.

* * * * *

(n) *Herd Depopulation*. Removal by slaughter or other means of destruction of all cattle, bison, or swine in a herd or from a specific premises or under common ownership prior to restocking such premises with new animals, except that steers and spayed heifers or barrows and gilts maintained for feeding purposes may be retained on the premises if the Veterinarian in Charge finds such retention to be compatible with eradication efforts. The

Veterinarian in Charge may also permit removal of nonpregnant heifers, without payment of indemnity, to Quarantined Feedlots in lieu of immediate slaughter.

* * * * *

(u) *Herd known to be affected*. Any herd in which any animal has been classified as a brucellosis reactor and which has not been released from quarantine.

* * * * *

(v) *Animals*. Cattle, bison, and breeding swine.

3. Footnotes 3, 4, and 5, are renumbered footnotes 2, 3, and 4, respectively; all references to footnotes 3, 4, and 5 are amended to refer to footnotes 2, and 3, and 4, respectively and new footnote 2 is revised to read as follows:

²The Deputy Administrator shall authorize payment of federal indemnity by the Department at the applicable maximum per head rate in § 51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) In States or areas not under federal quarantine; (c) In States requesting payment of federal indemnity; and (d) In States not requesting a lower rate.

4. Section 51.3(a) is revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) *Cattle and bison*. The Deputy Administrator may authorize ² the payment of federal indemnity by the Department to any owner whose cattle or bison are destroyed as affected with brucellosis.

(1) *Brucellosis reactor cattle and bison*. The Deputy Administrator may authorize ² the payment of Federal indemnity by the Department to owners whose cattle or bison are destroyed as brucellosis reactors. The indemnity shall not exceed \$250 for any registered cattle or \$50 for any nonregistered cattle or bison, except that, for nonregistered dairy cattle the indemnity shall not exceed \$250, and except that in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed \$250 for any registered cattle or \$150 for any nonregistered cattle or bison, except that, for nonregistered dairy cattle the indemnity shall not exceed \$250. Prior to payment of indemnity, proof of destruction ³ shall be furnished to the veterinarian in charge.

(2) *Herd depopulation*. The Deputy Administrator may authorize ² the payment of Federal Indemnity by the Department to any owner whose herd of cattle or bison is destroyed because of brucellosis. The indemnity shall not exceed \$250 for any registered cattle or

\$50 for any nonregistered cattle or bison, except that, for nonregistered dairy cattle the indemnity shall not exceed \$250, and except that, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed \$250 for any registered cattle or \$150 for any nonregistered cattle or bison, except that, for nonregistered dairy cattle, the indemnity shall not exceed \$250. Indemnity payment shall only be made for brucellosis-exposed cattle and bison or for cattle and bison from a herd known to be affected, and only when the Deputy Administrator determines that the destruction of all cattle and bison in the herd will contribute to the brucellosis eradication program. Prior to payment of indemnity, proof of destruction³ shall be furnished to the veterinarian in charge. Indemnity will be paid for reactor animals in accordance with § 51.3(a)(1).

(3) *Exposed female calves.* The Deputy Administrator may authorize² the payment of Federal indemnity to any owner whose *exposed female calf or calves* are destroyed because of brucellosis. The indemnity for such animals shall not exceed \$50 per head. Indemnity payments shall be made only for exposed female calves and only when the Deputy Administrator determines that the destruction of such calves will contribute to the brucellosis eradication program. Prior to payment of indemnity, proof of destruction shall be furnished to the veterinarian in charge.

5. Section 51.5 (a) and (b) are revised to read as follows:

§ 51.5 Identification of animals to be destroyed because of brucellosis.

(a) The claimant shall be responsible for insuring that any animal for which indemnity is claimed shall be identified in accordance with the provisions of this section within 15 days after having been classified as a reactor or for any other animal subject to this part within 15 days after having been condemned. The veterinarian in charge may extend the time limit to 30 days when a request for such extension is received by him prior to the expiration date of the original 15 day period allowed, and when he determines that the extension will not adversely affect the brucellosis eradication program; and except further, that the Deputy Administrator shall upon request in specific cases, extend the time limit beyond the 30-day period when unusual or unforeseen circumstances occur which prevent or hinder the identification of the animals within the 30-day period, such as, but not limited to, floods, storms, or other Acts of God which are beyond the

control of the owner, or when identification is delayed due to requirements of another Federal Agency.

(b) Cattle and bison shall be identified by branding the letter "B" on the left jaw not less than 2 nor more than 3 inches high and by tagging with an approved metal tag bearing a serial number and description "U.S. Reactor" or a similar State reactor tag suitably attached to the left ear of each animal: *Provided, However, That in lieu of branding with the letter "B" and tagging with an approved metal tag, reactors and exposed cattle and bison in herds scheduled for herd depopulation, may be identified by USDA approved backtags and either accompanied directly to slaughter by a Veterinary Services or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals may only be removed by a Veterinary Services representative, State representative, accredited veterinarian, or by other persons authorized for this purpose by a Veterinary Services representative.*

6. In § 51.6, footnotes 6 and 7 are renumbered 5 and 6, respectively, and all reference to footnotes 6 and 7 are changed to references to footnotes 5 and 6, respectively; and § 51.6 is amended to redesignate and renumber paragraphs (b) and (c) as (c) and (d) respectively; and to add a new paragraph (b) to read as follows:

§ 51.6 Destruction of animals; time limit for destruction of animals.

(b) *Bison.* The claimant shall be responsible for insuring that bison subject to this part shall be sold under permit to a State or Federal slaughtering establishment approved by the Deputy Administrator for this purpose or to a stockyard approved by the Deputy Administrator for sale to such a slaughtering establishment, *Provided, However, That the Deputy Administrator may approve such other bison slaughtering establishments as may be deemed necessary to accomplish destruction of bison subject to this part.*

§§ 51.7 and 51.8 [Removed]

§§ 51.9, 51.10, 51.11, 51.12 [Redesignated as §§ 51.7, 51.8, 51.9, and 51.10]

7. Sections 51.7 and 51.8 are removed from Part 51. Sections 51.9, 51.10, 51.11 and 51.12 are amended by redesignating them as §§ 51.7, 51.8, 51.9, and 51.10, respectively.

8. New § 51.7 is amended by redesignating the text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 51.7 Claims for indemnity.

(b) Cattle presented as registered shall be accompanied by their registration papers issued in the name of or transferred by the registered breed association to the name of the owner or shall be paid for as nonregistered cattle: *Provided, however, That if the registration papers are not available because they have been sent to an association for transfer of ownership or if the cattle are less than 1 year old and unregistered, the Veterinarian in Charge may grant a reasonable time of not more than 30 days for the presentation of their registration papers: Except that the Deputy Administrator may extend the period an additional 30 days upon receipt of a request from the owner within the original 30-day period, when the owner can show to the satisfaction of the Deputy Administrator that the inability to produce the certificate within such 30-day period is due to circumstances beyond the owner's control.*

9. New § 51.9 is amended by revising paragraphs (c) and (e); and by adding a new paragraph (h) to read as follows:

§ 51.9 Claims not allowed.

(c) If all cattle, bison, and swine eligible for testing in the claimant's herd have not been tested for brucellosis under Veterinary Services or State supervision.

(e) If the animals are classified as reactors and are unofficial vaccinates, unless there is either a record of a negative official test made not less than 30 days following the date of unofficial vaccination or unless other Veterinary Services approved tests show the unofficial vaccinates are affected with virulent *Brucella*.

(h) If any known reactors remain in the herd.

(Secs. 3, 4, 5, 11, and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 38 Stat. 1265, as amended; sec. 3, 76 Stat. 130 [21 U.S.C. 111-113, 114, 114a-1, 120, 121, 125, 134b] 37 FR 28464, 28477; 38 FR 19141)

All written submissions made pursuant to this interim rule will be made available for public inspection at the Federal Building, 6505 Belcrest Road,

Room 805, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the *Federal Register*.

Done at Washington, D.C. this 23rd day of November 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-32496 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Examination for Compliance With State Unclaimed Property Laws; Interpretive Ruling and Policy Statement

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Final Interpretive Ruling and
Policy Statement (IRPS) 82-4.

SUMMARY: This interpretive Ruling and Policy Statement designates certain state authorities to conduct inspections of Federal credit union records to determine compliance with state unclaimed property laws when there is reasonable cause to believe that a Federal credit union has not complied with such laws. It also sets forth the NCUA's position on enforcement jurisdiction and fees for inspections.

EFFECTIVE DATE: November 26, 1982.

ADDRESS: National Credit Union
Administration, 1776 G Street, NW.,
Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:
James J. Engel, Assistant General
Counsel, Department of Legal Services,
at the above address. Telephone (202)
357-1030.

SUPPLEMENTARY INFORMATION: At its June 16, 1982, meeting, the NCUA Board issued for public comment a proposed Interpretive Ruling and Policy Statement (IRPS) regarding state examination of Federal credit union (FCU) records for purposes of determining compliance with state unclaimed property laws. (47 FR 26842, June 22, 1982.) The proposed IRPS designated those state agencies authorized under state law to conduct unclaimed property inspections as representatives of the NCUA Board for purposes of determining compliance with those laws. In addition, the NCUA Board set forth its position that enforcement of those laws remains exclusively within the jurisdiction of the

Board, and that FCU's were not subject to the imposition of fees by the state for the inspection.

Twenty-four comments were submitted: 19 from FCUs, 4 from trade associations, and 1 from a state department of revenue. (One state agency submitted a copy of its unclaimed property reporting form but did not comment on the proposed IRPS.) Of the 24 comments, 20 opposed the proposal and 4 were generally supportive.

Analysis of Comments

1. Designation of State Agencies

The overall objection to the IRPS was that no state should have the authority to examine an FCU's records. While some commenters objected to state examinations strictly as a matter of principle, most felt that IRPS would have a precedential effect that would lead to examinations by numerous other state agencies. Once one state agency was allowed access to FCU records, states would be encouraged to claim authority to conduct other types of compliance examinations and any argument as to NCUA's exclusive examination power would be weakened.

In addition to a claim that the door would be open for other examinations, several commenters expressed concern that the state would engage in fishing expeditions and would impose additional operational burdens on FCU's, e.g., FCU staff time, because state examiners may not be familiar with a credit union's operations. Other commenters considered the action contrary to the dual chartering concept and/or a relegation by the NCUA Board of its responsibility and authority. Two commenters recognized the authority of the Board to designate any person to examine FCU records but disagreed with this action for several of the above stated reasons. They were also of the view that a designation should only be made when there is a strong showing of need.

The NCUA Board is not convinced that the designation of a state agency in this instance will establish an undesirable precedent. In fact, it is believed that by exercising its designation authority under the Federal Credit Union Act, the NCUA Board has strengthened its position vis-a-vis previous policy. In the past, NCUA did not object to state inspections; a position that could be viewed in a judicial forum as a recognition of state examination authority in areas in addition to unclaimed property. Now, however, the Board has specifically exercised one of its statutory powers to

designate a particular party to conduct an examination for a particular purpose in a matter in which that party has a particular interest. The disposition of unclaimed property has been recognized as a legitimate interest of the states. The NCUA Board is also of the opinion that inherent in its designation authority is the authority to withdraw that designation should, for example, a particular state agency abuse its authority in the examination process.

The NCUA Board has no reason to believe that state agencies will act in any manner that would cause undue hardship for FCUs. The Board is confident that state inspections will not be used as fishing expeditions. Although additional FCU staff time will be involved, the Board is not convinced that it will be unreasonable or burdensome. State personnel have long been involved in inspecting the records of other types of institutions and "unfamiliarity" with FCU's is not considered a persuasive argument to preclude state inspections.

2. Basis for Inspection

Two commenters were concerned that the proposal may be viewed as a preemption by NCUA of state law prerequisites for an inspection of records. Their objection was that since most state unclaimed property laws require there be a reasonable cause to believe that an institution has not complied with the unclaimed property law before an examination can be made, states may view NCUA's designation as preempting that state law requirement.

This point is well taken and the Board had no intent to preempt such a state law requirement. The Board is of the opinion that such a requirement is appropriate and should relieve the concerns of other commenters as to unreasonable burden. The NCUA Board, therefore, has included "reasonable cause to believe" language in the IRPS. Additionally, the Board looked to the recent statutory amendment permitting state examination of national bank records for unclaimed property law compliance. Substantially identical language has been used in the IRPS including the statements that the review of records be at reasonable times and upon reasonable notice to a Federal credit union.

One of the commenters also suggested that a probable cause standard be used as a basis for a state inspection, rather than "reason to believe"; because state unclaimed property laws prescribe criminal penalties. It is the Board's understanding that criminal penalties are imposed for willful refusal to deliver

abandoned property to the state, rather than for failure to report or deliver. The Board is not convinced that a "higher" standard should apply to FCU's than to other types of institutions.

3. Enforcement

A large majority of commenters agreed that enforcement of state unclaimed property laws is properly a function of NCUA. The NCUA Board believes that its position on enforcement authority is primarily supported by § 206 of the Federal Credit Union Act and by the existence of a dual system of credit unions. In addition, there is no indication that Congress, when amending the Federal law applicable to national banks, considered extending state examination authority to include enforcement authority even though such an issue would normally be associated with examining for compliance.

The final IRPS, therefore, retains the NCUA Board's statement on enforcement authority. If violations of state law occur and the matter cannot be resolved informally between the parties, the state should report such violations to NCUA for appropriate action. The imposition of fines and penalties under state law would fall within NCUA's enforcement jurisdiction.

4. Fees

The proposed IRPS provided that FCU's were not subject to the imposition of fees for a state inspection. A few commenters did not address this issue or did not specifically agree or object to it. Most commenters agreed with the position. The NCUA Board, however, has reconsidered the issue and believes that a fee may be appropriate in certain situations.

State law normally provides that a fee to cover the cost of an inspection or examination will be imposed only where, after an inspection has been made, it is determined that the party inspected has not complied with the state law. The Board believes that where a state has reasonable cause to believe that an FCU has not complied with state law, it conducts an inspection, and finds violations, a fee is appropriate. The Board has amended the proposed IRPS to include such a provision. The Board is not, however, providing fee imposition authority to a state agency. The fee must be authorized under state law.

The NCUA's position has long been that FCU's are required to comply with state unclaimed property laws and the majority of commenters agreed with that position. To take the position that a state could not charge a fee for examination, when violations exist and

when permitted by state law, would be somewhat inconsistent with NCUA's compliance requirement. Being subject to a fee for failure to comply with the law provides a compliance incentive.

5. Retroactivity and Service Charge

Two commenters suggested that if an IRPS is issued, the Board should address two other issues; retroactivity and service charges for account inactivity.

With regard to retroactivity, the commenters were concerned because some state laws may permit the unclaimed property administrator to reach back 20 years for unclaimed funds or there may not be any limitation on how far back the state may claim. This would raise potential safety and soundness issues particularly if an FCU had absorbed such accounts into income.

The Board is not convinced that retroactivity presents a true problem for FCU's. First, the Board is confident that state authorities will act reasonably in claiming abandoned accounts. Second, FCU's have been required to comply with such laws in the past, have been examined by state authorities and have not, to the Board's knowledge, been adversely affected. Finally, as the enforcement authority, the Board will be in a position to address any true safety and soundness issue.

As to service charges that result in absorbing accounts or portions thereof into income, this is a matter of contract between the FCU and the member. To the extent that such charges are either authorized or not prohibited by the Federal Credit Union Act, NCUA Rules and Regulations or Board policy, and are provided for in the contract with the member, it is the Board's position that state law prohibiting such charges would be preempted.

6. Miscellaneous Comments

Several other comments were submitted on the proposed IRPS. One commenter suggested that a comprehensive unclaimed property regulation be issued by NCUA preempting state law. Others suggested that NCUA revise its examination procedure to cover unclaimed property compliance. Another questioned whether any state imposed fee would be deducted from NCUA's operating fee. Additionally, one commenter suggested that unclaimed funds be turned over to NCUA and applied to the Share Insurance Fund.

The Board believes that the subject of unclaimed property is of particular interest to the states, not NCUA, and therefore compliance examinations are

more appropriately a matter for state authorities.

The Board does not believe it should attempt to issue a comprehensive regulation on a matter of particular state concern. Due to the fact that a fee would only be charged for a violation of state law, a reduction in NCUA's operating fee would not be warranted. Because unclaimed funds remain the property of the member, even after delivery to the state, under the Uniform Act, the Board does not believe absorption of accounts by the Insurance Fund is a feasible alternative.

Finally, one commenter requested relief from the expenses of advertising the existence of unclaimed accounts, particularly those accounts of nominal value. For the most part, state law permits a holder of unclaimed property to turn it over to the state prior to the minimum period requirement for abandonment and relieves the holder of any further liability. It is suggested that FCU's exercise that option, if they find such accounts are increasing their expenses.

The NCUA Board, therefore, adopts the following statement as a Final Interpretive Ruling and Policy Statement.

Final Interpretive Ruling and Policy Statement (IRPS) 82-4

It has been the position of the National Credit Union Administration that Federal credit unions are required to comply with state unclaimed property laws. Recognizing that states have an interest in assuring compliance with these laws, it is the NCUA Board's position that limited access to Federal credit union records by appropriate state authorities for this purpose is both reasonable and proper.

Section 106 of the Federal Credit Union Act (12 U.S.C. 1756) provides that the books and records of each Federal credit union are subject to examination by, and accessible to, any person designated by the National Credit Union Administration Board (NCUA Board). Pursuant to this authority, those state agencies, authorized under state law to conduct inspections pursuant to the Uniform Disposition of Unclaimed Property Act or similar abandoned property law, are designated by the NCUA Board to conduct inspections of Federal credit union records for the sole purpose of determining compliance with state unclaimed property laws.

The state authorities so designated may, at reasonable times and upon reasonable notice to a Federal credit union, review a Federal credit union's records solely to ensure compliance

with applicable state unclaimed property laws upon a reasonable cause to believe that the Federal credit union has failed to comply with such laws.

The NCUA Board does, however, maintain its position that it has exclusive enforcement jurisdiction over Federal credit unions. Therefore, any violations of unclaimed property laws should be reported to the appropriate NCUA regional office.

A reasonable fee may be assessed to cover the cost of the inspection only if a Federal credit union has been found to be in violation of the law and such fee is authorized under state law.

By the National Credit Union Administration Board, November 18, 1982.

Rosemary Brady,

Secretary, National Credit Union Administration Board.

November 18, 1982.

[FR Doc. 82-32411 Filed 11-24-82; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 82-23]

Banks Remaining Closed

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Removal of final rule.

SUMMARY: Section 407 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320 (October 15, 1982), amends 12 U.S.C. 95(b)(1) which addresses the applicability of state banking holidays to national banks. As a result of that amendment, Interpretive Ruling 7.7435, 12 CFR 7.7435, has been superseded. Accordingly, the Office of the Comptroller of the Currency ("Office") is removing 12 CFR 7.7435.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Brenda Curry, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447-1880.

SUPPLEMENTARY INFORMATION: The Office has determined that this action does not constitute a "major rule" under Executive Order 12291. Rescission of the interpretive ruling will merely eliminate confusion and will neither increase national bank costs or prices nor have any adverse competitive effect. Therefore, a Regulatory Impact Analysis will not be prepared. The Regulatory Flexibility Act also does not apply to

this action, since the Office is dispensing with notice and comment procedures as impracticable and contrary to the public interest.

List of Subjects in 12 CFR Part 7

Legal bank holidays.

Adoption of Amendment

PART 7—[AMENDED]

§ 7.7435 [Removed]

In 12 CFR Part 7, § 7.7435 is removed.

Dated: November 9, 1982.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 82-32381 Filed 11-24-82; 8:45 am]

BILLING CODE 4810-33-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708

Mergers of Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: This rule amends Part 708 to clarify that the rules and regulations on mergers of credit unions do not restrict the authority of the NCUA Board to authorize emergency mergers under the authority of section 205 of the Federal Credit Union Act as amended by the Garn-St Germain Depository Institutions Act of 1982.

DATES: Effective Date: November 25, 1982.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Assistant General Counsel, Department of Legal Services, at the above address. Telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: Section 131 of the Garn-St Germain Depository Institutions Act of 1982 amends section 205 of the Federal Credit Union Act to authorize the NCUA Board to, among other things, approve a merger of an insured credit union that is insolvent, or in danger of insolvency, with any other insured credit union without regard to other Federal or state laws. Such action may be taken when the Board determines that an emergency requiring expeditious action exists, other reasonable alternatives do not exist, and the merger would best serve the public interest.

Part 708 of the National Credit Union

Administration Rules and Regulations sets forth the procedures and requirements for mergers of credit unions. Due to the fact that certain of these provisions would not be applicable to mergers authorized under the Garn-St Germain amendment, the NCUA Board has determined that Part 708 should be amended. This amendment clarifies that the provisions of Part 708 do not restrict the authority of the NCUA Board to approve mergers pursuant to the Garn-St Germain amendment.

Regulatory Procedures

The NCUA Board certifies that the final rule will not have a significant economic impact on any small federally-insured credit unions. The final rule merely clarifies statutory authority. Therefore, a regulatory flexibility analysis is not required, 5 U.S.C. 605(b).

The NCUA Board has determined that notice and public comment on this rule are unnecessary and not in the public interest. 5 U.S.C. 553(b)(3). In addition, the NCUA Board finds that a 30 day delayed effective date is unnecessary. The statutory authority became effective October 15, 1982, and the final rule reflects that authority. 5 U.S.C. 553(d).

List of Subjects in 12 CFR Part 708

Credit unions.

Accordingly, the NCUA Board hereby amends Part 708 of the NCUA Rules and Regulations as set forth below.

Rosemary Brady,
Secretary of the Board.

November 18, 1982.

(12 U.S.C. 1758(h)), Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789)

PART 708—[AMENDED]

1. Part 708 is amended, by designating the present paragraph of § 708.0 as paragraph (a) and by adding at the end thereof a new paragraph (b) to read as follows:

§ 708.0 [Amended]

* * * * *

(b) Nothing in this Part shall operate as a restriction or otherwise impair the authority of the Board to approve a merger pursuant to the provisions of Section 205(h) of the Act.

[FR Doc. 82-32375 Filed 11-24-82; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 747**Administrative Actions, Adjudicative Hearings, and Rules of Practice and Procedure**

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration is issuing a final rule to conform the provisions of Part 747 with certain of the amendments contained in the Garn-St Germain Depository Institutions Act of 1982. These amendments permit the NCUA Board to compromise, modify, or remit civil money penalties. They also authorize the NCUA Board to remove a credit union management official from office for a violation of the Depository Institution Management Interlocks Act.

EFFECTIVE DATE: November 26, 1982.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Assistant General Counsel, Department of Legal Services, at the above address. Telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: The Garn-St Germain Depository Institutions Act of 1982 (the "1982 Act"), enacted on October 15, 1982, made certain changes to section 206 of the Federal Credit Union Act (the Act), 12 U.S.C. 1786, governing the enforcement authority of the National Credit Union Administration (NCUA Board or Board). Certain of these statutory amendments require the Board to make conforming amendments to Part 747 of its Rules and Regulations. That part describes the various administrative adjudicative actions available to the Board, the grounds for those actions, and the procedures followed.

First, the civil money penalty provisions of the Act have been amended to provide the Board with express authority to compromise, modify or remit any civil money penalty that is subject to imposition or has been imposed under section 206(k), as redesignated. An appropriate amendment has been made to § 747.402 of the regulation.

Second, the Board has been given the authority to remove from office any director, officer, or committee member of an insured credit union for violating the Depository Institution Management Interlocks Act. Unlike other removal actions, the Board is not required to make the determination that the official's conduct has or will be

detrimental to the credit union or its members, or that the violation is one involving personal dishonesty or unfitness. A new subsection (d) has been added to § 747.502 to set forth this ground for removal.

The remaining amendments to Part 747 are technical in nature and are due to the redesignation of various provisions in the Act.

Regulatory Procedures

The NCUA Board certifies that the final rule will not have a significant economic impact on any small federally-insured credit unions. The final rule contains conforming amendments, reflecting statutory changes to the Federal Credit Union Act, and does not constitute substantive rulemaking by the NCUA Board. Therefore, a regulatory flexibility analysis is not required. 5 U.S.C. 605(b).

The NCUA Board has determined that notices and public comments on this rule are unnecessary and not in the public interest. 5 U.S.C. 553(b)(B). In addition, the Board finds that a 30 day delayed effective date is unnecessary. The statutory amendments reflected in the rule became effective on October 15, 1982. 5 U.S.C. 553(d).

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Credit unions, Penalties.

Accordingly, the NCUA Board hereby amends Part 747 of the NCUA Rules and Regulations as set forth below.

Rosemary Brady,
Secretary of the Board.

November 18, 1982.

(Sec. 206, 92 Stat. 3652 (12 U.S.C. 1786) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789))

§ 747.101 [Amended]

1. Section 747.101 is amended by removing "206(j)(2)" in paragraph (a)(3) and inserting in lieu thereof "206(k)(2)", and by removing "206(h) in paragraph (b) and inserting in lieu thereof "206(i)".

§ 747.401 [Amended]

2. Section 747.401 is amended by removing "206(j)(2)" and inserting in lieu thereof "206(k)(2)".

3. Section 747.402 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

§ 747.402 [Amended]

* * * * *

The Board may, in its discretion, compromise, modify, or remit any civil money penalty that is subject to imposition or has been imposed.

§ 747.501 [Amended]

4. Section 747.501 is amended by removing "206(h)" and inserting in lieu thereof "206(i)".

5. Section 747.502 is amended by adding a new paragraph (d) to read as follows:

§ 747.502 [Amended]

* * * * *

(d) The Board may remove any director, officer, or committee member of an insured credit union upon its finding that such a party has committed any violation of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*) or regulations issued thereunder, including Part 711 of this chapter.

§ 747.505 [Amended]

6. Section 747.505 is amended by removing "206(g)(5)" in paragraph (b) and inserting in lieu thereof "206(g)(6)", and by removing "206(g)(3)" in paragraph (c) and inserting in lieu thereof "206(g)(4)".

§ 747.601 [Amended]

7. Section 747.601 is amended by removing "206(h)" and inserting in lieu thereof "206(i)".

§ 747.605 [Amended]

8. Section 747.605 is amended by removing "206(h)" and inserting in lieu thereof "206(i)".

[FR Doc. 82-32374 Filed 11-24-82; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 82-AWA-20]

Alteration of Group II Terminal Control Area, Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the final rule amending the Las Vegas, NV, Terminal Control Area (TCA) as it describes area "G" published in the *Federal Register* on July 12, 1982. This action corrects that error.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Maxey, Airspace Regulations and Obstructions Branch (ATT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 82-18549 was published on July 12, 1982, (47 FR 30052) which reconfigured the Las Vegas, NV, Group II TCA to provide greater flexibility to aircraft wishing to avoid the TCA and ensure that turbine-powered aircraft operations are wholly contained within TCA airspace. Errors were noticed in the final rule describing "Area G" and this action corrects those errors.

List of Subjects

14 CFR Part 71

Terminal control areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 82-18549 as published in the Federal Register on July 12, 1982, is corrected as follows:

Las Vegas, NV, Terminal Control Area [Corrected]

Area G. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at the 10-mile DME point on the Las Vegas 115° radial; thence clockwise along the 10-mile radius arc to, and south along, the Las Vegas 185° radial to, and clockwise along, the 15-mile radius arc to, and northeasterly along, the Las Vegas 235° radial to, and clockwise along, the 10-mile radius arc to, and easterly along, the Las Vegas 295° radial to, and counterclockwise along, the 8-mile radius arc, to, and northerly along, the Las Vegas 180° radial to lat. 36°00'04" N., long. 115°09'32" W., and clockwise along, the 2-mile radius arc to Sky Harbor Airport to, and easterly along, a line direct to the point of beginning.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on November 15, 1982.

R. J. Vanvuren,

Director, Air Traffic Service.

[FR Doc. 82-32122 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASW-63]

Transition Areas; Designation; Caldwell, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Caldwell, Tex. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Caldwell Airport. This amendment is necessary to provide protection for aircraft executing a standard instrument approach procedure (SIAP) using the College Station VORTAC. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Effective Date: February 17, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On September 23, 1982, a notice of proposed rulemaking was published in the Federal Register (47 FR 41986) stating that the Federal Aviation Administration proposed to designate the Caldwell, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory

Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 GMT, February 17, 1983, as follows:

Caldwell, TX New

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Caldwell Municipal Airport (latitude 30°31'12" N., longitude 96°42'13" W.).

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c).)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) it is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, Tex., on November 12, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-32045 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-2162]

H & R Block, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies Paragraphs 5 and 6 of the Commission's order issued on March 1, 1972 (37 FR 6663), by substituting a new paragraph 5, so as to make the order's provisions consistent with federal tax laws. Section 7216 of the Internal Revenue Code provides a comprehensive scheme for regulating the use by tax preparers of information obtained from customers, and the Commission believes that this scheme is adequate to prevent the misuse of confidential information by petitioner in the future.

DATES: Consent Order issued March 1, 1972. Modifying Order issued Nov. 2, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/PC, Lewis Franke, Washington, D.C. 20580, (202) 376-2891.

SUPPLEMENTARY INFORMATION: In the Matter of H & R Block, Inc., a corporation. Codification appearing at 37 FR 6663 remains unchanged.

List of Subjects in 16 CFR Part 13

Tax return preparation service.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: James C. Miller III, Chairman, David A. Clanton, Michael Pertschuk, Patricia P. Bailey.

In the matter of H & R Block, Inc., a corporation, Docket No. C-2162.

Order Reopening the Proceeding and Granting Request To Modify Order

On January 22, 1982, H & R Block Inc., the petitioner, filed a Request to Reopen Proceedings under Section 2.51 of the Commission's Rules of Practice. Block sought to set aside paragraphs 5 and 6 of a March 1, 1972, order against the company. On June 8, 1982, Block filed a Supplement to Modification of Request to Reopen Proceedings, seeking modification of the Order paragraphs instead of their elimination. The Order paragraphs prohibit Block from using information obtained from a customer for any purpose other than the preparation of tax returns unless, prior to obtaining any information from the customer, Block obtains the customer's written consent. The consent form used must disclose: (1) The exact information to be used, (2) the particular use to be made of such information, (3) and a description of the parties or entities to whom the information may be made available.

The petitioner contends that enactment of Section 7216 of the Internal Revenue Code, 26 U.S.C. 7216, on December 10, 1971, effective January 1, 1972, and adoption by the Internal Revenue Service of regulations 301.7216-1 through 301.7216-3 on March 24, 1974, constitute a change of the law warranting reopening the proceeding and modifying paragraphs 5 and 6 of the Commission's Order. Regulation 301.7216-3 reads in pertinent parts:

Disclosure or use only with formal consent of taxpayer.—(a) Written consent to use or disclosure—(1) Solicitation of other business. (i) If a tax return preparer has obtained from the taxpayer a consent described in paragraph (b) of this section, he may use the tax return information of such taxpayer to solicit from the taxpayer any additional current business, in matters not related to the Internal Revenue Service, which the tax return preparer provides and offers to the public. The request for such consent may not be made later than the time the taxpayer receives his completed tax return from the tax return preparer. If the request is not granted, no follow up request may be made. This authorization to use tax return information of the taxpayer does not apply, however, for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless such other person and the tax return preparer are members of the same affiliated group

within the meaning of section 1504. Thus, for example, the authorization would not apply if the person is a corporation which is owned or controlled directly or indirectly by the same interests which own or control the tax return preparer but which is not affiliated with the tax return preparer within the meaning of section 1504(a). Moreover, this authorization does not apply for purposes of facilitating the solicitation of additional business to be furnished at some indefinite time in the future, as, for example, the future sale of mutual fund shares or life insurance, or the furnishing of future credit card services. It is not necessary, however, that the additional business be furnished in the same locality in which the tax return information is furnished.

* * * * *

(2) Permissible disclosures to third parties. If a tax return preparer has obtained from a taxpayer a consent described in paragraph (b) of this section, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct. However, see § 301.7216-2 for certain permissible disclosures without formal written consent.

* * * * *

(b) Form of consent. A separate written consent, signed by the taxpayer or his duly authorized agent or fiduciary, must be obtained for each separate use or disclosure authorized in paragraph (a) (1), (2), or (3) of this section and shall contain—

- (1) The name of the tax return preparer,
- (2) The name of the taxpayer,
- (3) The purpose for which the consent is being furnished,

(4) The date on which such consent is signed,

(5) A statement that the tax return information may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under § 301.7216-2) other than that stated in the consent, and

(6) A statement by the taxpayer, or his agent or fiduciary, that he consents to the disclosure or use of such information for the purpose described in paragraph (b)(3) of this section.

The Commission has considered these developments and concluded that the public interest warrants its reopening the proceeding and modifying the order substantially as requested by petitioner. Section 7216 of the Code and the regulations promulgated thereunder constitute a comprehensive scheme for regulating the use by tax preparers of information obtained from customers. The Commission believes that this scheme is adequate to prevent the misuse of confidential information by petitioner in the future. The additional requirements of the Commission's Order, which mandate more disclosures and require that consent be obtained earlier from the customer, are not inconsistent with the regulatory scheme. However, they do impose an additional burden on respondent that the Commission has concluded is unnecessary. Accordingly,

It Is Ordered that paragraphs 5 and 6 of the Order be modified by the substitution of the following new paragraph:

5. Using or disclosing any information concerning any customer of respondent, including the name and address of the customer, obtained as a result of the preparation of the customer's tax return, for any purpose which is not essential or necessary to the preparation of said tax return, except as specifically authorized by Section 7216 of the Internal Revenue Code and the regulations promulgated thereunder or by future amendments thereto.

By direction of the Commission.

Issued: November 2, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-32463 Filed 11-24-82; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release Nos. 33-6436; 34-19257; 35-22716; IC-12826; FR-6]

Interpretive Release About Disclosure Considerations Relating to Foreign Operations and Foreign Currency Translation Effects

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: In this release the Commission suggests that information as to the nature of a registrant's foreign operations gained as a result of implementing a new accounting standard for foreign currency translation issued by the Financial Accounting Standards Board ("FASB") could, in many cases, be used to develop improved disclosures relating to foreign operations and foreign currency translation effects. Therefore, the Commission encourages voluntary experimentation with meaningful disclosures in this regard. The release also addresses disclosure considerations related to the new standard's transition provisions.

FOR FURTHER INFORMATION CONTACT: Robert K. Herdman (202-272-2141) or Edmund Coulson (202-272-2130), Office of the Chief Accountant, or Howard P. Hodges (202-272-2553), Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:**Background and Discussion**

As a result of considerable controversy and criticism related to its Statement of Financial Accounting Standards ("SFAS") No. 8, "Accounting for the Translation of Foreign Currency Transactions and Foreign Currency Financial Statements," the FASB, in January 1979, added a project to its agenda to reconsider accounting for foreign currency translation. That project turned out to be the most complex and controversial issue faced by the FASB to date. In December 1981, after almost three years of extensive proceedings, the FASB issued SFAS No. 52, "Foreign Currency Translation," which replaces SFAS No. 8. The new standard is effective for fiscal years beginning on or after December 15, 1982, although earlier application is encouraged. In fact, many companies adopted the standard for their 1981 financial statements and many more are expected to do so in 1982.

SFAS No. 52 embraces a methodology different from that of the previous standard and may significantly impact multinational corporations. SFAS No. 52 is also significant in that it represents a very broad, rather than a prescriptive, standard. It sets forth objectives and provides guidelines to be used by managements in meeting those objectives. The standard is designed to (1) provide information that is generally compatible with the expected economic effects of a rate change on an enterprise's cash flows and equity and (2) reflect in consolidated statements the financial results and relationships as measured in the primary currencies in which the individual entities conduct their businesses (i.e., the "functional currencies").¹

The standard requires the exercise of management judgment in assessing the facts and circumstances of particular situations and applying the guidelines to those facts and circumstances. The principal determination involves the selection of the appropriate functional currency for each of a company's foreign operations.² The functional currency

guidelines provided by the standard address indicators of the foreign operations' cash flows, sales prices and markets, expenses, financing, and intercompany transactions and arrangements. While application of these guidelines may result in a relatively clear determination in many cases, others will be more difficult. In such cases, the FASB stated that the economic facts and circumstances pertaining to a particular foreign operation shall be assessed in relation to the FASB's stated objectives for foreign currency translation.

Although a broad standard of this type carries with it the risk of decreasing the comparability of reporting financial information, it is clear that there may be significant differences in the nature of foreign operations both within a particular company and among companies, even those within the same industry.³ The new standard gives managements the necessary flexibility to appropriately match reported accounting results with economic facts and circumstances. Ultimately, however, the success of SFAS No. 52 (and the usefulness of the concept of broad standards of financial reporting in general) depends on the confidence of the investment community in its application which in turn is heavily dependent on the quality of related disclosures.

SFAS No. 52 requires disclosure of the aggregate transaction gain or loss included in determining net income and an analysis of the changes during the period in the separate component of equity for cumulative translation adjustments. SFAS No. 52 also states that it may be necessary to disclose significant rate changes occurring after the date of the enterprise's financial statements or after the date of the foreign currency statements of a foreign entity (if different), and their effect on unsettled balances pertaining to foreign currency transactions. In addition, the FASB encouraged management to supplement the disclosures required by

SFAS No. 52 with an analysis and discussion of the effects of rate changes on the reported results of operations. The FASB stated that the purpose of such supplemental disclosures is to assist financial report users in understanding the broader economic implications of rate changes and to compare recent results with those of prior periods.⁴ The FASB considered requiring disclosure that would describe and possibly quantify the effects of rate changes on reported revenues and earnings, but decided not to, primarily because of the wide variety of potential effects, the perceived difficulties of developing the information, and the impracticality of providing meaningful guidelines.⁵

1. Disclosure Considerations

In a review of a sample of annual reports of registrants who adopted SFAS No. 52 for their 1981 financial statements, the Commission's staff observed compliance with the specific disclosure requirements as well as certain voluntary supplemental disclosures of the type encouraged by the Board.⁶ While SFAS No. 52 does not require disclosure as to a company's functional currencies or the extent to which foreign operations are measured in a currency other than the reporting currency, most companies disclosed (either explicitly or by implication) that either "all" or "most" of their foreign operations were measured in the local currency. Frequently, it was disclosed that exceptions were made for operations in high inflation countries (in some cases specific countries were named). A significant number of companies, however, only stated that "certain" operations were measured in a local currency or provided no disclosure as to the extent of foreign operations so measured. Some companies disclosed that the related translation adjustments

⁴ Paragraph 144, SFAS No. 52.

⁵ Ibid.

⁶ In 1981, the dollar significantly strengthened against many major foreign currencies and thus frequently had a depressing effect on reported sales and operations. Many companies in the staff's sample referred to the effect of the strong dollar. A significant number quantified the effect on sales; some also provided a quantification of the effect on operating results. A few companies discussed their foreign operating results as reflected in the local currency, with the effects of translation noted. Other disclosures included the effects of exchange rate changes on backlog, interest expense, wages, cost of raw material purchased from the parent, transactions between subsidiaries, inventory levels, debt to equity ratio, working capital, effective tax rate, and cost of sales. The Commission encourages continuing experimentation by individual registrants in an effort to achieve meaningful disclosures in this area.

¹ An entity's functional currency is the currency of the primary economic environment in which the entity operates; normally that is the currency in which an entity primarily generates and expends cash. (Para. 5, SFAS 52)

² This determination can have a significant impact on reported financial results. The functional currency approach which SFAS No. 52 imposes differentiates between those operations that are relatively self-contained and integrated within a foreign country and those that are an extension of the parent's domestic operations. It concludes that "translation adjustments" (which result from consolidating the former) are related to the parent company's net investment in those operations and have no immediate, direct impact on the parent's

cash flows. Therefore, those adjustments are not included in determining net income for the period but are presented as part of consolidated stockholders' equity until the parent's investment in that operation is sold or liquidated. "Transaction gains and losses" (which result from the consolidation of all other foreign operations, as well as most other foreign currency transactions) are accounted for and reported in net income, as was the case under SFAS No. 8.

³ Because of the nature of the standard and the complexity of the issues involved, the FASB has formed an implementation group to advise its staff of possible implementation problems. The Commission believes that it is important to identify and deal with implementation problems by providing timely guidance where necessary or appropriate.

did not impact cash flow or were unrealized.

The Commission believes that information as to the nature of a registrant's foreign operations gained as a result of implementing SFAS No. 52⁷ could be used to develop improved disclosures relating to foreign operations and foreign currency translation effects, including information as to functional currencies. Such disclosures could provide meaningful information to investors and others who are attempting to understand the impact of a registrant's foreign operations on the financial statements. Segment disclosures provide information about the nature and extent of a company's foreign operations, but the standards inherent in SFAS No. 52 are premised on the fact that there may be significant differences in economic substance among various foreign operations—i.e., different exposure to exchange rate risk and different impact on cash flow, with resulting different accounting treatment. The Commission recognizes that this is a complex area and, thus, is not specifying the location⁸ or nature of the particular disclosures to be made. Indeed, information such as a display of net investments by major functional currency or an analysis of the translation component of equity (either by significant functional currency or by geographical areas used for segment disclosure purposes) will not always be practicable. Nevertheless, the Commission encourages experimentation with narrative information, such as disclosure about the functional currencies used to measure significant foreign operations or the degree of exposure to exchange rate risks (which exists for all companies engaged in foreign operations, regardless of their functional currencies), in order to enable investors

to assess the impact of exchange rate changes on the reporting entity.⁹

There follows a discussion of two specific situations which registrants may wish to explain to investors. When a registrant determines that the financial data of significant foreign operations should be measured in other than the reporting currency, there may be an indication that all or some of those operations' cash flows are generally not available to meet the company's other short-term needs for cash. Thus, it may be appropriate that such a registrant discuss those operations in a disaggregated manner in order to meaningfully address liquidity and capital resource considerations.¹⁰ A discussion of the company's intracompany financing practices may also be meaningful in this regard. Of course, if those foreign cash flows are generally available to meet the parent's cash needs and the local functional currency determinations result from a preponderance of the other evaluative factors specified by SFAS No. 52, discussion of that fact would facilitate understanding of the registrant's operations.

Another example relates to significant foreign operations in highly inflationary economies. In SFAS No. 52, the FASB adopted a pragmatic solution to the problems resulting from the lack of a stable measuring unit (i.e., those operations' financial data must be measured in the reporting currency). As a result, the translation effects of rate changes are included in net income even though the operations may be relatively self-contained or have other environmental characteristics such that remittances to the parent are unlikely.¹¹ In such cases, discussion only of consolidated, or even reporting currency, liquidity and capital resources may not be sufficient.

⁷ The Commission also believes that a discussion as to the nature of the translation component of equity may assist investors in understanding the reported financial condition. This may be particularly important due to the fact that the Commission's staff has been advised that some analysts and others may be arbitrarily adjusting reported earnings for the translation adjustments. Meaningful disclosure about a company's foreign operations may help to overcome this tendency.

¹⁰ Item 303(a) of Regulation S-K states in part that "where in the registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant reportable segment or other subdivision of the business and on the registrant as a whole."

¹¹ Similarly, the functional currency for foreign operations which are experiencing financial difficulties such that additional capital investments may be necessary may also be determined to be the reporting currency.

2. Disclosures During the Transition Period

Adoption of SFAS No. 52 is mandatory for fiscal years beginning on or after December 15, 1982, with earlier application encouraged. The financial statements for prior years may be restated to conform to the new standard and, if not restated, companies may present disclosure of earnings data for the prior year computed on a pro forma basis. Companies that adopted the standard for fiscal years ending on or before March 31, 1982 were required to disclose the effect of adopting the new standard on earnings data for the year of the change in order to provide comparability with companies still using SFAS No. 8; that disclosure is not required for fiscal years ending after that date.

The Board determined that the extended mandatory effective date was appropriate to provide sufficient time for companies to make any desired changes in financial policies that might be prompted by the new standard and to prepare internally for the implementation of the standard. The Board did not require restatement because it recognized that the accounting exposure determined in accordance with SFAS No. 8 had been hedged by the management of some companies and that different management actions might have been taken if SFAS No. 8 had not been in effect. Finally, the Board did not extend the requirement to disclose the effect of adopting the standard to years ending after March 31, 1982 because it believed that many companies will have terminated some or all hedges of the SFAS No. 8 accounting exposure, thereby making any meaningful determination of the effect virtually impossible. In addition, the Board believed that the cost of requiring two systems of translation beyond early 1982 was not justified.

The Commission understands the rationale for the transition provisions outlined above. Nonetheless, the Commission is concerned about the adequacy of disclosure about the effects of accounting changes.¹² Financial

¹² In several of the annual reports included in the staff's sample, a substantial portion of record (or otherwise increased) earnings was attributable to the adoption of SFAS No. 52. While the 1981 effect of the accounting change was disclosed in the financial statements, information outside the financial statements focused a high level of attention on the strength of the reported results without providing adequate information to permit an evaluation of the comparability of those results particularly since, in each of these cases, the companies did not restate or provide pro forma disclosures.

⁷ Successful implementation of SFAS No. 52 requires a fundamental evaluation of the nature of each of a company's foreign operations. Often, this will require input from management personnel involved in various activities within the company. Also, investment objectives with respect to individual foreign operations will need to be reevaluated (e.g., amounts of intercompany accounts considered to be "permanent" advances).

⁸ The management's discussion and analysis section may be used for these additional disclosures. The Commission's requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 303 of Regulation S-K (17 CFR Part 229) are designed to elicit information necessary to an understanding of a registrant's financial statements. This is to be accomplished by providing information enabling an evaluation of the amounts and certainty of cash flows from operations and a registrant's ability to generate adequate amounts of cash to meet its needs for cash (liquidity) as well as an assessment of the impact of events that have had, or may have, a material effect on trends of operating results.

statement users have a natural tendency to assume that accounting results are prepared using a consistent methodology throughout the reporting period and from year to year. Indeed, users have a right to make that assumption and the trends in reported financial results are a particularly useful indicator of a company's progress. Where accounting results and the trends therein are materially impacted by accounting changes, it is incumbent upon the registrant to clearly bring this fact to the attention of users, together with such other information which may be necessary to enable investors to adequately assess reported results.¹³

For those registrants that adopt SFAS No. 52 in 1982 or thereafter, the Commission believes that, where appropriate, useful information as to comparability can be best provided by restating prior years' financial statements (or making appropriate pro forma disclosures) and by disclosing the effect of the change on results of operations for the current year. However, the Commission understands that, for the reasons considered by the FASB in adopting the transition provisions included in SFAS No. 52, presentation of such information may not always be meaningful (or computation thereof may not be practicable). In such instances, the Commission expects registrants to discuss this fact and the reasons therefor. In this regard, registrants should consider discussing any modifications of operating, financing, or hedging practices which have been effected.

The Commission also believes that registrants that have not yet adopted SFAS No. 52 should discuss the potential effects of adoption in registration statements and reports filed with the Commission.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated to:

1. Add a new section 501.06, entitled as follows:

¹³ Item 301 of Regulation S-K [17 CFR 229.301] requires the presentation of certain selected financial data, the purpose of which is to supply in a convenient and readable format data which highlight certain significant trends in the registrant's financial condition and results of operations. The instructions to that item require a description of factors, such as accounting changes, that materially affect the comparability of the information reflected.

§ 501.06 Disclosure Considerations Related to Foreign Operations and Foreign Currency Translation Effects

2. Include in section 501.06 the sections entitled "Background and Discussion," "Disclosure Considerations," and "Disclosures during the Transition Period," identified as specified below:

- a. Background and Discussion.
- b. Disclosure Considerations.
- c. Disclosures during the Transition Period.

This codification is a separate publication issued by the SEC. It will not be published in the **Federal Register** Code of Federal Regulations system:

List of Subjects in 17 CFR Part 211

Accounting, Reporting and recordkeeping requirements, Securities.

PART 211—[AMENDED]

Commission Action:

Subpart A of 17 CFR Part 211 is amended by adding thereto reference to this release (FRR No. 6).

By the Commission.

November 18, 1982.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-32363 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 33-6434; 34-19244; IC-12823]

Purchases of Certain Equity Securities by the Issuer and Others; Adoption of Safe Harbor

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; rule amendments.

SUMMARY: The Commission has announced the adoption of Rule 10b-18 under the Securities Exchange Act of 1934 ("Act") to provide a "safe harbor" from liability for manipulation in connection with purchases by an issuer and certain related persons of the issuer's common stock. The issuer or other person will not incur liability under the anti-manipulative provisions of Sections 9(a)(2) or 10(b) (and Rule 10b-5 thereunder) if purchases are effected in compliance with the limitations contained in the safe harbor. The Commission has also adopted certain amendments to Rule 10b-6 under the Act which will eliminate the Commission's current program of regulating issuer repurchases under that rule. These amendments will except from Rule 10b-6 purchases of an issuer's

common stock (and certain related securities) when the issuer is engaged in certain distributions of those securities.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

John B. Manning, Jr., Esq. (202-272-2874), or Mary Chamberlin, Esq. (202-272-2880); Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has considered on several occasions since 1967 the issue of whether to regulate an issuer's repurchases of its own securities.¹ The predicates for this effort have been twofold: first, investors and particularly the issuer's shareholders should be able to rely on a market that is set by independent market forces and not influenced in any manipulative manner by the issuer or persons closely related to the issuer. Second, since the general language of the anti-manipulative provisions of the federal securities laws offers little guidance with respect to the scope of permissible issuer market behavior, certainty with respect to the potential liabilities for issuers engaged in repurchase programs has seemed desirable.

The most recent phase of this proceeding is proposed Rule 13e-2 which was published for public comment on October 17, 1980.² This rule would have imposed disclosure requirements and substantive purchasing limitations on an issuer's repurchases of its common and preferred stock. These restrictions, which generally would have limited the time, price, and volume of purchases, also would have been imposed on certain persons whose purchases could be deemed to be attributable to the issuer. In addition, the issuer, its affiliates, and certain other persons

¹ Before its most recent release in October, 1980, issuer repurchases had been the subject of three public rule proposals. The first was a Commission draft of a proposed Rule 10b-10 published in 1967 by the United States Senate in connection with hearings on proposed legislation that became the Williams Act Amendments of 1968, Pub. L. No. 90-439, 82 Stat. 454 (July 29, 1968). Proposed Rule 10b-10 was reprinted in *Hearings on S. 510 before the Subcommittee on Securities of the Senate Committee on Banking and Currency*, 90th Cong., 1st Sess. 214-216 (1967). The Commission then published Rule 13e-2 for comment in 1970 and in 1973. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (1970) and 10539 (December 6, 1973), 38 FR 34341 (1973).

² Securities Exchange Act Release No. 17222 (October 17, 1980), 45 FR 70890 (1980) ("October Release").

would have been subject to a general antifraud provision in connection with their purchases of the issuer's common and preferred stock.

The Commission has recognized that issuer repurchase programs are seldom undertaken with improper intent, may frequently be of substantial economic benefit to investors, and, that, in any event, undue restriction of these programs is not in the interest of investors, issuers, or the marketplace. Issuers generally engage in repurchase programs for legitimate business reasons and any rule in this area must not be overly intrusive. Accordingly, the Commission has endeavored to achieve an appropriate balance between the goals described above and the need to avoid complex and costly restrictions that impinge on the operation of issuer repurchase programs.

In light of these considerations, and based on the extensive public files developed in this proceeding, the Commission has determined that it is not necessary to adopt a mandatory rule to regulate issuer repurchases. Accordingly, the Commission has today withdrawn proposed Rule 13e-2,³ and, as discussed in this release, is amending Rule 10b-6 to eliminate most issuer repurchase regulation under that rule. In lieu of direct regulation under Rule 10b-6 and proposed Rule 13e-2, the Commission has determined that a safe harbor is the appropriate regulatory approach to offer guidance concerning the applicability of the anti-manipulative provisions of Rule 10b-5 and Section 9(a)(2) to issuer repurchase programs. New Rule 10b-18 reflects this determination.⁴

The Commission wishes to stress, however, that the safe harbor is not mandatory nor the exclusive means of effecting issuer purchases without manipulating the market. As a safe harbor, new Rule 10b-18 will provide clarity and certainty for issuers and broker-dealers who assist issuers in their repurchase programs. If an issuer effects its repurchases in compliance with the conditions of the rule, it will avoid what might otherwise be substantial and unpredictable risks of liability under the general anti-manipulative provisions of the federal

securities laws.⁵ Moreover, since Rule 10b-18 is a safe harbor rather than a *per se* rule, the Commission believes that the safe harbor should be available to all issuers and their affiliated purchasers and should not be limited in its application to any particular class of issuers, such as those defined in the October Release as "Section 13(e) issuers."

The Commission emphasizes that no affirmative inference should be drawn that bids for or purchases of an issuer's stock by persons to which the safe harbor is not explicitly available, or with respect to securities other than the issuer's common stock, should be made in accordance with the safe harbor. The safe harbor is not intended to define the appropriate limits to be observed by those persons not covered by the safe harbor nor the appropriate limits to be observed by anyone when purchasing securities other than common stock. In addition, the safe harbor is not the exclusive means by which issuers and their affiliated purchasers may effect purchases of the issuer's stock in the marketplace. Given the greatly varying characteristics of the markets for the stock of different issuers, there may be circumstances under which an issuer could effect repurchases outside of the guidelines that would not raise manipulative concerns. This is especially the case in the context of the uniform volume guidelines, which cannot easily reflect those varying market characteristics. As discussed more fully below, the Commission wishes to continue to receive the views of any interested persons on whether additional disclosure by the issuer concerning the repurchase program should affect the percentage level of purchases that would be covered under the safe harbor. In order to make it clear that Rule 10b-18 is not the exclusive means to effect issuer repurchases, paragraph (c) of the rule provides that no presumption shall arise that an issuer or affiliated purchaser has violated Section 9(a)(2) or Rule 10b-5 if the

³ Paragraph (b) of the rule provides that any issuer and its affiliated purchasers could not be held liable under the anti-manipulative provisions of Section 9(a)(2) of the Act or Rule 10b-5 under the Act solely by reason of the number of brokers or dealers used, and the time, price, and amount of bids for or purchases of common stock of the issuer, if such bids or purchases are effected in compliance with all of the conditions of paragraph (b) of the rule. Of course, Rule 10b-18 is not a safe harbor from violations of Rule 10b-5 which may occur in the course of an issuer repurchase program but which do not entail manipulation. For example, Rule 10b-18 confers no immunity from possible Rule 10b-5 liability where the issuer engages in repurchases while in possession of favorable, material non-public information concerning its securities.

purchases do not meet the conditions of paragraph (b).

The remaining parts of the release describe Rule 10b-18 and the amendments to Rule 10b-6 and contrast those provisions to the proposals in the October Release. Interested persons should refer to the October Release for a more detailed discussion of the general background of the Commission's consideration of issuer repurchase programs. In addition, interested persons may wish to refer to a release that the Commission recently issued proposing for comment several amendments to its trading practices rules, including Rule 10b-6.⁶

II. Safe Harbor Rule 10b-18

A. Coverage of Rule 10b-18

The safe harbor of paragraph (b) is available for any bid or purchase that constitutes a "Rule 10b-18 bid" or a "Rule 10b-18 purchase," as defined in the rule. Paragraph (a)(3) defines a Rule 10b-18 purchase as a purchase of common stock of an issuer by or for the issuer or any affiliated purchaser of the issuer. Paragraph (a)(4) defines a Rule 10b-18 bid as a bid for securities that, if accepted, or a limit order to purchase securities that, if executed, would result in a Rule 10b-18 purchase.⁷

B. General Antifraud Provision

Under paragraph (b) of proposed Rule 13e-2, a class of issuers defined as "Section 13(e) issuers," their affiliates, affiliated purchasers, and any broker, dealer, or other person acting on behalf of these issuers, affiliates, or affiliated purchasers would have been subject to a broad general antifraud and anti-manipulative prohibition in connection with any bids or purchases of any equity security of the issuer. The commentators that addressed this provision opposed its adoption for essentially two reasons. First, they argued that it was unnecessary in view of existing provisions of the Act such as Section 9(a)(2) and Section 10(b) and Rule 10b-5 thereunder. Second, they argued that the general nature of paragraph (b) would detract from the certainty otherwise provided by the rule.

⁶ Securities Exchange Act Release No. 18528 (March 3, 1982), 47 FR 11482 (1982) ("Trading Practices Release").

⁷ The definition of a Rule 10b-18 purchase excludes certain transactions that were never intended to be the subject of regulation under an issuer repurchase rule. Some of these transactions were those enumerated in paragraph (f) of proposed Rule 13e-2. In view of the changed regulatory approach reflected in the rule and its more limited coverage, some of the excepted transactions of proposed Rule 13e-2(f) have been deleted in the adopted rule.

³ Securities Exchange Act Release Nos. 33-6435, 34-19245, IC-12824 (November 17, 1982).

⁴ In view of the fact that the provisions of the safe harbor afforded by Rule 10b-18 are substantially similar to the provisions of proposed Rule 13e-2 that would have been imposed on a mandatory basis and for which there has already been substantial public comment, the Commission has determined that further notice and comment are not necessary. See n.1, *supra*.

The Commission has reconsidered the question of whether a general antifraud provision is necessary in this context and has concluded that it is not. The sole purpose of the rule as adopted is to provide a safe harbor from liability under the anti-manipulative provisions of the Act. For that reason, the Commission has determined not to include a general antifraud provision in Rule 10b-18.

C. Disclosure

Proposed Rule 13e-2 would have required issuers and affiliated purchasers that sought to repurchase more than two percent of the issuer's stock during any twelve-month period publicly to disclose certain specified information prior to effecting any purchases of the issuer's stock.⁸ In addition, those persons would have been required to disclose the specified information to any exchange on which the stock was listed for trading or to the NASD if the stock was authorized for quotation in NASDAQ.⁹

Most of the commentators that addressed the issue suggested that the disclosure provisions were not necessary in view of the existing requirements of other provisions of the federal securities laws (e.g., Section 10(b) and Rule 10b-5). Other commentators stated that disclosure obligations should depend on the particular facts and circumstances involved. Accordingly, they suggested that *per se* disclosure requirements were not appropriate, and, indeed, might cause persons subject thereto to believe that disclosure of other information was unnecessary. Finally, commentators cited practical compliance problems that might arise, such as determining at the beginning of any twelve-month period whether the issuer would need to purchase more than two percent of its stock to satisfy corporate needs, and the need to periodically update disclosure to reflect material changes.

The proposed disclosure requirements were not intended to be co-extensive with other disclosure obligations. Nevertheless, the Commission is persuaded that the obligation to disclose information concerning repurchases of an issuer's stock should depend on whether the information is material under the circumstances, regardless of whether such purchases are made as part of a program authorized by a company's board of directors or otherwise. The Commission has therefore determined not to adopt the specific disclosure requirements

contained in paragraph (d) of proposed Rule 13e-2, even as a safe harbor. Other relevant provisions of the federal securities laws and existing policies and procedures of the various self-regulatory organizations impose disclosure responsibilities that appear to be sufficient to ensure that investors and the marketplace in general receive adequate information concerning issuer repurchases. The Commission emphasizes its belief that timely disclosure of all material information in the context of issuer repurchases may significantly facilitate the maintenance of an orderly market for the issuer's stock.

D. Definitions

Affiliated purchaser. Rule 10b-18 contains a definition of the term "affiliated purchaser" that differs somewhat from the definition of that term as contained in proposed Rule 13e-2.¹⁰ As proposed in Rule 13e-2, the definition of affiliated purchaser would have included natural persons acting with the issuer for the purpose of acquiring the issuer's securities,¹¹ as well as persons who controlled the issuer's purchases, or whose purchases were controlled by, or were under common control with, the issuer's purchases.¹² Commentators were critical of the use of the terms "acting with" and "control" because, in their view, those terms are imprecise. Some commentators noted that the use of those terms suggested that all directors and officers of the issuer would be deemed to be affiliated purchasers and therefore covered by the rule notwithstanding the Commission's stated intent to the contrary. In particular, they stated that the "control" standard articulated in paragraph (a)(2)(ii) of proposed Rule 13e-2 could be interpreted to be the same as the historical affiliation standard and therefore would encompass more than the control of actual purchasing activity that the Commission intended the rule to cover.

The commentators suggested that the "acting with" standard should be changed to an "acting in concert" standard since the latter has particular legal significance. Commentators also suggested that the class of persons defined in proposed paragraph (a)(2)(ii) as affiliated purchasers should be limited to persons that have day-to-day responsibility for the issuer's purchases.

¹⁰ The definition is similar to the definition of affiliated purchaser recently proposed to be added to Rule 10b-6. See Trading Practices Release, 47 FR at 11488.

¹¹ Proposed Rule 13e-2(a)(2)(i).

¹² Proposed Rule 13e-2(a)(2)(ii).

In addition, commentators recommended the addition of a proviso in the definition that would specifically except purchases by officers or directors unless they otherwise were an affiliated purchaser.

The Commission agrees with the commentators that the concept of "acting in concert" provides more legal certainty than the standard proposed in the October Release. Accordingly, the first part of the definition of affiliated purchaser has been modified to include the "acting in concert" standard instead of the "acting with" standard.¹³ The Commission believes that the "acting in concert" standard will cover the same persons as proposed Rule 13e-2 was intended to cover, including persons acting with the issuer in purchasing the issuer's securities, regardless of whether the purchases are made for the account of the issuer itself.¹⁴

As adopted, the second clause of the definition of affiliated purchaser covers any affiliate that, directly or indirectly, controls the issuer's Rule 10b-18 purchases, or whose purchases are controlled by, or are under common control with, those of the issuer.¹⁵ Under this formulation, a person would not be considered to be an affiliated purchaser unless the person is an affiliate¹⁶ and one of the three control standards is met.¹⁷

Finally, to provide further guidance in the definition of affiliated purchaser, the Commission has added a proviso that states, in part, that an officer or director that participates in a decision to authorize the issuer to make or effect Rule 10b-18 bids or purchases will not be considered to be an affiliated purchaser on that basis alone.¹⁸

The definition of affiliated purchaser as proposed in Rule 13e-2 also would have included affiliates who controlled the issuer by means of ownership of the issuer's securities, and affiliates that were not natural persons.¹⁹ The

¹³ Rule 10b-18(a)(2)(i).

¹⁴ See October Release, 45 FR at 70895, note 30.

¹⁵ Rule 10b-18(a)(2)(ii).

¹⁶ The term "affiliate" is defined in paragraph (a)(1) of the rule.

¹⁷ The determination of whether the affiliate controls the issuer's purchases of its securities, or whether its purchases are controlled by, or are under common control with, the issuer's purchases, would have to be made by the issuer or the other persons involved in the transaction. The Commission is of the view that in most cases paragraph (a)(2)(ii) will cover, among other things, purchases of a parent-issuer's stock by its subsidiaries, and purchases of a subsidiary-issuer's stock by the parent regardless of whether the purchases are made for the account of the subsidiary-issuer itself.

¹⁸ Rule 10b-18(a)(2)(iii).

¹⁹ Proposed Rule 13e-2(a)(2)(iii) and (iv).

⁸ Proposed Rule 13e-2(d)(1).

⁹ Proposed Rule 13e-2(d)(2).

commentators were critical of the application of the rule to these affiliates in the absence of any evidence of concerted activity or control over the issuer's purchases of its securities. The Commission agrees that paragraphs (a)(2) (iii) and (iv) as proposed could be overly broad, in the context of a safe harbor or mandatory rule, in light of the rationale underlying the affiliated purchaser concept. Accordingly, it has determined not to include in Rule 10b-18 paragraphs (a)(2) (iii) and (iv).²⁰

Trading Volume. The term trading volume has been adopted in paragraph (a)(11) of Rule 10b-18 with some modification from the term as proposed in Rule 13e-2. Generally, the term defines trading volume as the average daily trading volume over the preceding four weeks. This calculation would then be used in the context of the volume provisions of the Rule, which provide a safe harbor for daily purchases of up to 25% of the trading volume.

Proposed Rule 13e-2 would have required that the issuer subtract from the trading volume figure all "Rule 13e-2" purchases by or for the issuer or an affiliated purchaser.²¹ The rationale for the exclusion was to assure that the trading volume figures used to calculate the permissible volume of issuer purchases reflected only transactions effected by persons other than issuers or affiliated purchasers. Some commentators stated that the computations required to determine the amounts to be excluded would impose a substantial compliance burden on issuers, affiliated purchasers and broker-dealers that would be disproportionate to the benefits sought to be achieved by requiring the exclusion. In addition, commentators argued that, because of the volume limits, the permissible volume of Rule 13e-2 purchases would not be increased significantly if Rule 13e-2 purchases were included in the calculation of the average trading volume figure.

The Commission generally agrees that compliance with the volume conditions would prevent any significant increase in the permissible volume of purchases that could result from including Rule

10b-18 purchases in less than block size in the trading volume figure. The inclusion of block purchases by the issuer, however, in calculating trading volume could significantly increase the amount of stock that could be purchased within the volume limitations of the safe harbor. Accordingly, the definition of trading volume as adopted in Rule 10b-18 would require the issuer or affiliated purchaser to subtract block purchases that are made by for the issuer or affiliated purchaser from the trading volume figure.

Block. The Commission has considered two alternative definitions of the term "block."²² The significance of the term is that purchases of blocks are excepted from the volume conditions. Thus, an issuer that chooses to comply with those conditions may purchase up to 25% of the trading volume, and, in addition, may purchase one or more blocks, as defined. The amount of securities purchased in block size need not be included in determining whether the 25% limitation had been reached. The Commission has adopted the simpler of the two definitions. Paragraph (a)(14) of Rule 10b-18 defines a block as that amount of stock that has an aggregate purchase price of not less than \$50,000 and, if the aggregate purchase price is less than \$200,000, a number of shares that is not less than 5,000.

The Commission has considered whether to require the issuer to exclude, in calculating the amount of securities that would constitute a block (i) any amount of securities that a broker or dealer had assembled or accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser, and (ii) any amount that a broker-dealer had sold short to the issuer or to an affiliated purchaser if the issuer or affiliated purchaser knew of had reason to know that the sale was a short sale.

Some commentators suggested that the issuer should be required to exclude from a block only those shares that a broker or dealer had accumulated as principal with the purpose of sale or resale to the issuer or affiliated purchaser. In their view, a broader exclusion would impede normal block trading practices, since a broker could not assemble a block on an agency basis and then cross it as such on an exchange. The commentator suggested that this kind of transaction would not have adverse market impact, or present the opportunity for circumvention of the

volume limitations, that led the Commission to propose this part of the block definition.²³ The Commission agrees with the commentators that these concerns arise only where broker-dealers accumulate blocks as principal for the purpose of sale or resale to the issuer or affiliated purchasers, and the definition of the term block reflects that judgment.²⁴

Certain commentators also suggested that the "know or have reason to know" standard that was proposed to apply in determining whether to exclude from an amount of securities that otherwise would constitute a block broker-dealer's short sales to the issuer should also apply in determining whether to exclude shares accumulated for the purpose of resale to the issuer. The Commission has modified the proviso accordingly.

E. Purchasing Conditions

In order to take advantage of the safe harbor provided by Rule 10b-18, an issuer or affiliated purchaser would have to comply with all of the conditions of paragraph (b) of the rule.²⁵

1. **Timing conditions.** The conditions that relate to the timing of purchases have been adopted, for purposes of the Rule 10b-18 safe harbor, substantially as they were proposed in Rule 13e-2. For a transaction in a NASDAQ security, otherwise than on an exchange, there need only be an independent bid currently reported in Level 2 of NASDAQ.²⁶ For exchange traded securities, if the Rule 10b-18 purchase is to be effected on an exchange, the transaction cannot be the opening transaction for the security on such exchange, and the transactions cannot be effected during the one-half hour before the scheduled close of trading on that exchange.²⁷

²³ The proviso to the block definition would also have excluded from that definition any amount of securities that the issuer or affiliated purchaser acquired upon the exercise of a listed call option. The Commission has not adopted this provision.

²⁴ See October Release, 45 FR at 70897, n.39. Thus, where a broker-dealer has sold to the issuer or to an affiliated purchaser a block that contained shares accumulated by the broker-dealer as principal for the purpose of resale to the issuer or affiliated purchaser, the transaction would not qualify as a block unless the remaining shares independently would be large enough to constitute a block under the definition. If the issuer had determined to comply with the volume provisions, the other shares which were accumulated would have to be taken into account in determining whether the volume limitation had been reached.

²⁵ These conditions have been adopted substantially in the same form as in proposed Rule 13e-2, although several liberalizing changes have been made.

²⁶ Rule 10b-18(b)(2)(iii).

²⁷ Rule 10b-18(b)(2)(ii).

²⁰ Whether affiliates that are not natural affiliates or are affiliates by virtue of their stock ownership would be affiliated purchasers under the rule depends on the facts and circumstances of each case. Nevertheless, the Commission is of the view that exercise of controlling influence by such an affiliate over the corporate matters of the issuer in general may give rise to a presumption that it controls purchases by the issuer. In addition, depending on the facts and circumstances, such affiliates could be deemed to be acting in concert with the issuer in connection with their purchases of the issuer's security. See also note 16, *supra*.

²¹ Proposed Rule 13e-2(a)(13).

²² See Proposed Rule 13e-2(a) (16A) and (16B). Commentators generally supported adoption of the simpler definition that was proposed in the October Release as an alternative to the "sliding scale" definition initially contained in the 1973 Proposal.

For transactions in reported securities, the Rule 10b-18 purchase cannot constitute the opening transaction reported on the consolidated tape.²⁸ Other time restrictions, as proposed in Rule 13e-2, applicable to trading in reported securities have been modified. Proposed Rule 13e-2 would have prohibited persons subject to the time limitations from purchasing a reported security for which the principal market was a national securities exchange during the period commencing one-half hour before the scheduled close of trading in the principal market for the security and ending with the termination of the period in which last sale prices were reported in the consolidated system. Some commentators argued that this limitation might have anti-competitive effects because it would prohibit trading by the issuer and any affiliated purchaser on other exchanges and in the over-the-counter markets for a substantial period of time. Some commentators suggested as an alternative that the trading prohibition should be only in the period within one-half hour of the scheduled close of trading in the market where the transaction was proposed to be effected. Another commentator suggested that trading should be prohibited only during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system.

The timing conditions in Rule 10b-18 provide that an issuer or an affiliated purchaser may effect, consistent with the safe harbor provisions of the rule, a transaction in a reported security (i) if the principal market for such security is an exchange, at a time other than during the one-half hour before the scheduled close of trading on the principal market, or (ii) if the transaction is to be effected on an exchange, at a time other than during the one-half hour before the scheduled close of trading on the exchange on which the transaction is to be effected, or (iii) if the transaction is to be effected otherwise than on an exchange, at a time other than during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system.²⁹ The Commission believes that

these limitations, as modified, appropriately resolve the commentators' concerns while achieving the objectives of the time limitations.

2. *Price conditions.* The price conditions have been adopted as published in proposed Rule 13e-2. The price limit for purchases of reported securities would be the higher of the last sale price reported in the consolidated system or the highest independent published bid, as defined in Rule 11Ac1-1(a)(9) [§ 240.11Ac1-1(a)(9)] under the Act, regardless of the market reporting that figure.³⁰ The price limit applicable to purchases of exchange traded securities in transactions on an exchange is the higher of the highest current independent bid quotation or the last sale price on such exchange.³¹

The pricing conditions of Rule 10b-18 provide that purchases of a NASDAQ security otherwise than on an exchange may be made at a net price no higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ.³² Purchases of securities that are neither NASDAQ securities nor reported securities otherwise than on an exchange may be made at the lowest current independent offer quotation ascertained on the basis of reasonable inquiry.³³ In both cases, the purchase price would include any commission equivalent, mark-up, or differential paid to a dealer.³⁴

3. *Single broker-dealer limitation.* A condition that the issuer or affiliated purchaser make purchases from or through not more than one broker or dealer on any day has been adopted as proposed. Purchases may be made from any number of broker-dealers in transactions that are not solicited by the issuer or affiliated purchaser. Some commentators suggested that the Commission should define what would constitute a solicitation for purposes of the rule. Whether a transaction has been solicited necessarily depends on the facts and circumstances of each case and must be determined by those who wish to rely on the rule's safe harbor. Although the Commission does not believe it should define the term solicitation, disclosure and announcement of a repurchase program would not necessarily cause all subsequent purchases to be deemed solicited.³⁵

4. *Volume conditions.* The volume conditions to the safe harbor are more liberal than those set forth in the October Release. Under Rule 10b-18, an issuer is permitted to purchase up to 25% of the average daily trading volume over the preceding four calendar weeks. Under Rule 13e-2, that number was 15%. The Commission has concluded that a 25% purchasing condition is appropriate in that Commission cases concerning manipulation in the context of issuer repurchases have historically involved conduct outside the conditions of Rule 10b-18, including a volume limitation of 25%.³⁶ The Commission also recognizes that establishing a uniform condition might be thought to suggest that purchases in excess of the limitations are *per se* manipulative. Accordingly, the Commission has provided in paragraph (c) of the rule that no presumption shall arise that purchases not in conformity with the limitations of the safe harbor violate the anti-manipulative provisions of the securities laws. The rule operates to impose no *per se* volume prohibition on issuer repurchases, and there may be circumstances in which an issuer would be justified in exceeding the volume conditions.³⁷ Repurchases outside of the safe harbor that are manipulative, of course, continue to be actionable under the securities laws.

F. Purchases on Behalf of Employee and Shareholder Plans

The definition of a Rule 10b-18 purchase contained in paragraph (a) of the rule excludes any purchase effected by or for an issuer plan if the transaction is effected by an agent independent of the issuer.³⁸ Those purchases are not considered to be attributable to the issuer and, therefore, are not intended to be addressed by the rule. The criteria contained in paragraph (a)(6) of the rule that are used to determine whether the purchasing agent is independent of the issuer are

³⁶ The volume provisions have been modified to make it clear that block purchases and privately-negotiated purchases are not required to be included in computing the 25% daily volume limitation. In addition, the Commission has not adopted that part of the volume limitations in proposed Rule 13e-2 that would have required the inclusion of securities acquired through the exercise of listed call options when computing the 25% daily volume limitation.

³⁷ For example, in some situations average trading volume during the preceding four weeks may not be representative of trading volume at the time of the issuer's purchases. Where current trading volume is substantially greater than that during the preceding four weeks, the issuer may be justified in exceeding the twenty five percent limitation.

³⁸ The terms "issuer plan" and "agent independent of the issuer" are defined in paragraphs (a)(5) and (a)(6) of the rule, respectively.

²⁸ Rule 10b-18(b)(2)(i)(A).

²⁹ Rule 10b-18(b)(2)(i)(B)-(D). In the October Release, the time limitations that were proposed for reported securities were separated into one for reported securities for which the principal market was an exchange and one for those reported securities for which the principal market was otherwise than on an exchange. Proposed Rule 13e-2(e)(2) (i) and (ii). In view of the modifications discussed in the text, the rule as adopted contains a time limitation that is applicable to all reported securities.

³⁰ Rule 10b-18(b)(3)(i).

³¹ Rule 10b-18(b)(3)(iii).

³² Rule 10b-18(b)(3)(iii).

³³ Rule 10b-18(b)(3)(iv).

³⁴ See Rule 10b-18(a)(12).

³⁵ See October Release, 45 FR at 70898, n. 47.

designed to insulate the market in the issuer's securities from influence by the issuer or an affiliate.

Two changes, however, have been made in paragraph (a)(6) as published in proposed Rule 13e-2. First, to avoid the possible need for various amendments to existing issuer plans, the commentators suggested that both paragraph (a)(6), and the proviso to it, should be drafted in terms of actual use or exercise of control over the agent by the issuer or affiliate rather than the retention of the power to use or exercise such control. The Commission has adopted this suggestion.

The second change to paragraph (a)(6) incorporates a new clause in the proviso. Certain commentators noted that in many issuer plans, particularly those which the issuer administers or allocates shares purchased for the plan to the participants' accounts, the issuer instructs the agent with respect to the amount of shares it is to purchase over a prescribed period of time. The amount to be purchased is determined by a formula set forth in the plan that generally is based on the amount of contributions and the average market price of the security over a prescribed period of time. The new clause in the proviso will permit the issuer to use such a formula to determine the amount of shares to be purchased by the agent without compromising the independence of the agent so long as the issuer or affiliate does not revise the formula more than once in any three-month period.³⁹

Certain commentators also suggested incorporating into the rule various interpretive positions concerning independent agents. For example, the Commission stated in the October Release that neither a common directorship between the issuer and the agent nor the issuer's right to remove the agent would by itself constitute control over the agent.⁴⁰ In addition, restrictions imposed on the agent otherwise than by the issuer,⁴¹ or which are required by

other statutes,⁴² would not preclude a determination that the agent was independent. Commentators also suggested incorporating into the rule a provision that would permit the imposition of certain controls if done in "good faith" and without manipulative intent.

As the Commission noted in the October Release, the determination of whether a control relationship exists between the issuer and the agent is a factual one to be made by the issuer.⁴³ It is not possible to incorporate in the rule or in a release every possible interpretive position concerning independent agents, since the issue of whether a control relationship exists necessarily will depend on the particular facts and circumstances. Accordingly, the Commission has determined not to attempt to further delineate that relationship in Rule 10b-18. Nevertheless, the Commission reaffirms the interpretive positions expressed in the October Release with respect to independent agents.

III. Solicitation of Views: Continuing Review of Issuer Repurchases and Rule 10b-18

The Commission intends to monitor the operation of issuer repurchase programs to determine the effects of Rule 10b-18 on those programs and the market for an issuer's securities. In view of the Commission's ongoing interest in this area, it continues to solicit the advice and views of all interested persons on the effects of Rule 10b-18 and whether the rule can be improved. It has been suggested, for example, that an issuer should have the benefit of a safe harbor where purchases exceed the percentage volume limitation of Rule 10b-18 and additional disclosure is made concerning the repurchases. The Commission is interested in whether dissemination of additional information by an issuer during its repurchase program, perhaps on a daily basis, should affect the availability of the safe harbor. Such information might include a further statement of the purpose and expected duration of the repurchase program, the amount of shares acquired or to be acquired on a particular day and the time of day or time period during the day the purchase or purchases are made or are proposed to

be made. Commentators are invited to address the question of whether, if this (or other) information is disseminated in a full and timely fashion, the issuer should be afforded the protections of the safe harbor notwithstanding the fact that its purchases exceed the current twenty five percent limitation. In this regard, the following additional questions may be relevant:

1. When should the information be disclosed (*i.e.*, before or after the shares are acquired)?

2. How should the information be disclosed (*e.g.*, by press release and notification to the exchange on which the securities are registered and listed for trading and to the NASD if the securities are authorized for quotation in NASDAQ)?

3. Would daily disclosure of such information add to or detract from the maintenance of a fair and orderly market for the issuer's stock?

4. Could the information be disseminated in a full and timely fashion that would protect the markets and investors?

5. Can a disclosure requirement be devised, in the context of a rule like Rule 10b-18, that would assure that manipulative practices do not occur or that those who engage in such practices are not insulated from liability?

IV. Amendments to Rule 10b-6

As reproposed for comment in the October Release, an amendment to Rule 10b-6 would have provided an exception from that rule for purchases of securities that were the subject of a "technical" distribution (*i.e.*, the issuer had outstanding securities immediately convertible into or exchangeable for the security to be purchased), provided that the purchases were made in compliance with Rule 13e-2.

The Commission has adopted the amendment with modifications. Paragraph (f) of Rule 10b-6 now provides that the rule shall not apply to bids for or purchases of any security, any security of the same class and series as such security, or any security that is convertible into, or exchangeable or exercisable for, such security, solely because the issuer or a subsidiary of the issuer has outstanding securities that are immediately convertible into or, exchangeable or exercisable for, that equity security. The effect of the amendment is to eliminate the need for an issuer or any person whose purchases would be attributable to the issuer to seek specific exemptive or interpretive relief from Rule 10b-6 to permit purchases of any class of the issuer's stock solely because the issuer

³⁹ Under the definition of independent agent as modified, the issuer may revise not more than once in any three-month period the basis for determining the amount of its contributions to the plan or the basis for determining the frequency of its allocations to the plan. As proposed, the rule would have permitted the issuer to make these revisions not more than once in any six-month period. That period has been reduced to three months at the suggestion of the commentators who noted that corporate decisions of this nature generally are made on a quarterly basis.

⁴⁰ See October Release, 45 FR at 70901, n.71.

⁴¹ For example, the Commission's Division of Investment Management requires that purchases with contributions to dividend reinvestment plans be made within 30 days from the date contributions are received by the agent if the plan is not to be

deemed an investment company. See October Release, 45 FR at 70901, n.73.

⁴² For example, trustees for plans subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, generally are required to purchase the issuer's securities at "fair market value" at the time purchases are made. See October Release, 45 FR at 70902, n.74.

⁴³ See October Release, 45 FR at 70901, n.71.

is engaged in a technical distribution.⁴⁴ Rule 10b-6 continues to apply, however, to purchases of any security that is the subject of any other kind of distribution, any security of the same class and series as that security, or any right to purchase any such security.

The Commission has adopted the second amendment to Rule 10b-6 proposed in the October Release concerning purchases by independent agents. Paragraph (g) now provides that a bid for or purchase of any security made or effected by or for a plan⁴⁵ shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer, as that term is defined in Rule 10b-18(a)(6).

V. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Act⁴⁶ requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered Rule 10b-18 and the related amendments to Rule 10b-6 in light of the standards cited in Section 23(a)(2) and believes that adoption of the rule and the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Act. In addition, since proposed Rule 13e-2 was proposed for comment before January 1, 1981, and since additional notice and comment are not necessary for the adoption of Rule 10b-18,⁴⁷ the Commission finds that the regulatory flexibility analysis provisions of the Regulatory Flexibility Act⁴⁸ are not applicable.

The Commission finds, in accordance with the Administrative Procedure Act ("APA"), 5 U.S.C. 553(d), that the

adoption of Rule 10b-18 and the amendments to Rule 10b-6, relieve mandatory restrictions and do not impose other substantive requirements. Accordingly, the foregoing action becomes effective immediately.

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

Text of Rule 10b-18 and Amendment to Rule 10b-6

Part 240 of Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By adding 17 CFR 240.10b-18 as follows:

§ 240.10b-18 Purchases of certain equity securities by the issuer and others.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions shall apply:

(1) The term "affiliate" means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer;

(2) The term "affiliated purchaser" means:

(i) A person acting in concert with the issuer for the purpose of acquiring the issuer's securities; or

(ii) An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer or whose purchases are under common control with those of the issuer;

Provided, however, That the term "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of his making Rule 10b-18 bids or effecting Rule 10b-18 purchases on behalf of the issuer and for its account and shall not include an officer or director of the issuer solely by reason of his participation in the decision to authorize Rule 10b-18 bids or Rule 10b-18 purchases by or on behalf of the issuer;

(3) The term "Rule 10b-18 purchase" means a purchase of common stock of an issuer by or for the issuer or any affiliated purchaser of the issuer, but does not include any purchase of such stock

(i) Effected by or for an issuer plan by an agent independent of the issuer;

(ii) If it is a fractional interest in a security, evidenced by a script

certificate, order form, or similar document;

(iii) Pursuant to a merger, acquisition, or similar transaction involving a recapitalization;

(iv) Which is subject to Rule 13e-1 under the Act [§ 240.13e-1];

(v) Pursuant to a tender offer that is subject to Rule 13e-4 under the Act [§ 240.13e-4] or specifically excepted therefrom;

(vi) Pursuant to a tender offer that is subject to Section 14(d) of the Act and the rules and regulations thereunder.

(4) The term "Rule 10b-18 bid" means (i) A bid for securities that, if accepted, or (ii) A limit order to purchase securities that, if executed, would result in a Rule 10b-18 purchase;

(5) The term "issuer plan" means any bonus, profitsharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, dividend reinvestment or similar plan for employees or security holders of the issuer or any affiliate;

(6) The term "agent independent of the issuer" means a trustee or other person who is independent of the issuer. The agent shall be deemed to be independent of the issuer only if

(i) The agent is not an affiliate of the issuer; and

(ii) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's common stock for the issuer plan, the amounts of the security to be purchased, the manner in which the security is to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed;

Provided, however, That the issuer or its affiliate will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the basis for determining the amount of its contributions to the issuer plan or the basis for determining the frequency of its allocations to the issuer plan, or any formula specified in the plan that determines the amount of shares to be purchased by the agent;

(7) The term "consolidated system" means the consolidated transaction reporting system contemplated by Rule 11Aa3-1 [§ 240.11Aa3-1];

(8) The term "reported security" means any security as to which last sale information is reported in the consolidated system;

(9) The term "exchange traded security" means any security, except a reported security, that is listed, or

⁴⁴ Rule 10b-18 supersedes all exemptions from Rule 10b-6 currently in effect that require the issuer or persons whose purchases are attributable to the issuer to make purchases in compliance with the conditions set forth in Appendix C (See 2 Fed. Sec. L. Rep. (CCH) § 22,727) solely because the issuer has convertible securities or warrants outstanding.

Several commentators suggested that Rule 10b-6 should be amended to reflect the staff's position concerning issuer repurchases during an offering of securities by affiliates of the issuer on a "shelf" registration statement, and repurchases after the time the issuer has reached an agreement in principle with respect to an acquisition that may involve a distribution of the issuer's stock. Although the Commission has determined not to amend the rule at this time, it has proposed certain changes with respect to these positions. See Trading Practices Release, 47 FR at 11489.

⁴⁵ The term "plan" is defined in Rule 10b-6(c)(4).

⁴⁶ 15 U.S.C. 78w(a)(2).

⁴⁷ See n.3 *supra*.

⁴⁸ 5 U.S.C. 603-04.

admitted to unlisted trading privileges, on a national securities exchange;

(10) The term "NASDAQ security" means any security, except a reported security, as to which bid and offer quotations are reported in the automated quotation system ("NASDAQ") operated by the National Association of Securities Dealers, Inc. ("NASD");

(11) The term "trading volume" means:

(i) With respect to a reported security, the average daily trading volume for the security reported in the consolidated system in the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected or the Rule 10b-18 bid is to be made;

(ii) With respect to an exchange traded security, the average of the aggregate daily trading volume, including the daily trading volume reported on all exchanges on which the security is traded and, if such security is also a NASDAQ security, the daily trading volume for such security made available by the NASD, for the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected or the Rule 10b-18 bid is to be made;

(iii) With respect to a NASDAQ security that is not an exchange traded security, the average daily trading volume for such security made available by the NASD for the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected or the Rule 10b-18 bid is to be made;

Provided, however, That such trading volume under paragraphs (a)(11) (i), (ii) and (iii) of this section shall not include any Rule 10b-18 purchase of a block by or for the issuer or any affiliated purchaser of the issuer;

(12) The term "purchase price" means the price paid per share

(i) For a reported security, or an exchange traded security on a national securities exchange, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer;

(ii) For a NASDAQ security, or a security that is not a reported security or a NASDAQ security, otherwise than on a national securities exchange, inclusive of any commission equivalent, mark-up, or differential paid to a dealer;

(13) The term "round lot" means 100 shares or other customary unit of trading for a security;

(14) The term "block" means a quantity of stock that either

(i) Has a purchase price of \$200,000 or more; or

(ii) Is at least 5,000 shares and has a purchase price of at least \$50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, That a block under paragraphs (a)(14) (i), (ii) and (iii) of this section shall not include any amount that a broker or a dealer, acting as principal, has accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor shall it include any amount that a broker or dealer has sold short to the issuer if the issuer or such affiliated purchaser knows or has reason to know that the sale was a short sale.

(b) *Conditions to be met.* In connection with a Rule 10b-18 purchase, or with a Rule 10b-18 bid that is made by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated Section 9(a)(2) of the Act or Rule 10b-5 under the Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made of the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer:

(1) *(One broker or dealer)* Effects all Rule 10b-18 purchases from or through only one broker on any single day, or, if a broker is not used, with only one dealer on a single day, and makes or causes to be made all Rule 10b-18 bids to or through only one broker on any single day, or, if a broker is not used, to only one dealer on a single day;

Provided, however, That

(i) This paragraph (b)(1) shall not apply to Rule 10b-18 purchases which are not solicited by or on behalf of the issuer or affiliated purchaser; and

(ii) Where Rule 10b-18 purchases or Rule 10b-18 bids are made by or on behalf of more than one affiliated purchaser of the issuer (or the issuer and one or more of its affiliated purchasers) on a single day, this paragraph (b)(1) shall apply to all such bids and purchases in the aggregate; and

(2) *(Time of purchases)* Effects all Rule 10b-18 purchases from or through a broker or dealer

(i) In a reported security, (A) such that the purchase would not constitute the opening transaction in the security reported in the consolidated system; and (B) if the principal market of such security is an exchange, at a time other than during the one-half hour before the scheduled close of trading on the principal market; and (C) if the purchase is to be made on an exchange, at a time other than during the one-half hour before the scheduled close of trading on the national securities exchange on which the purchase is to be made; and (D) if the purchase is to be made otherwise than on a national securities exchange, at a time other than during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system;

(ii) In any exchange traded security, on any national securities exchange, (A) such that the Rule 10b-18 purchase would not constitute the opening transaction in the security on such exchange; and (B) at a time other than during the one-half hour before the scheduled close of trading on the exchange;

(iii) In any NASDAQ security, otherwise than on a national securities exchange, if a current independent bid quotation for the security is reported in Level 2 of NASDAQ; and

(3) *(Price of purchase)* Effects all Rule 10b-18 purchases from or through a broker or dealer at a purchase price, or makes or causes to be made all Rule 10b-18 bids to or through a broker or dealer at a price.

(i) For a reported security, that is not higher than the published bid, as that term is defined in Rule 11Ac1-1(a)(9) under the Act, that is the highest current independent published bid or the last independent sale price reported in the consolidated system, whichever is higher;

(ii) On a national securities exchange, for an exchange traded security, that is not higher than the current independent bid quotation or the last independent sale price on that exchange, whichever is higher;

(iii) Otherwise than on a national securities exchange for a NASDAQ security, that is not higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ; or

(iv) Otherwise than on a national securities exchange, for a security that is not a reported security or a NASDAQ security, that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry; and

(4) (*Volume of purchases*) Effects from or through a broker or dealer all Rule 10b-18 purchases other than block purchases

(i) Of a reported security, an exchange traded security or a NASDAQ security, in an amount that, when added to the amounts of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any on that day, does not exceed the higher of (A) one round lot or (B) the number of round lots closet to 25 percent of the trading volume for the security;

(ii) Of any other security, in an amount that (A) when added to the amounts of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer on that day, does not exceed one round lot or (B) when added to the amounts of all other Rule 10b-18 purchases other than block purchases from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer during that day and the preceding five business days, does not exceed 1/20th of one percent (0.0005) of the outstanding shares of the security, exclusive of shares known to be owned beneficially by affiliates.

(c) No presumption shall arise that an issuer or affiliated purchaser of an issuer has violated Sections 9(a)(2) or 10(b) of the Act or Rule 10b-5 under the Act if the Rule 10b-18 bids or Rule 10b-18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraphs (b) (1) through (b) (4) of this section.

2. By revising paragraph (f) of § 240.10b-6, redesignating paragraph (g) thereof as paragraph (h), and adding a new paragraph (g), as follows

§ 240.10b-6 Prohibitions against trading by persons interested in a distribution.

(f) The provisions of this section shall not apply to bids for or purchases of any security of an issuer, any security of the same class and series as such security, or any security immediately convertible into, or exchangeable or exercisable for, any such security solely because the issuer or a subsidiary of such issuer has outstanding securities which are immediately convertible into, or exchangeable or exercisable for, such security.

(g) A bid for or purchase of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer, as that term is

defined in Rule 10b-18(a)(6) under the Act.

* * * * *

Statutory Authority

The Commission hereby adopts Rule 10b-18 and the amendments to Rule 10b-6 pursuant to the provisions of Sections 2, 3, 9(a)(6), 10(b), 13(e), 15(c) and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c) and 78w(a).

By the Commission.

George A. Fitzsimmons,
Secretary.

November 17, 1982.

[FR Doc. 82-32367 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM 79-76-133 (Colorado-29); Order No. 269]

High-Cost Gas Produced From Tight Formations

AGENCY: Federal Energy Regulatory Commission, DOE
ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the J Sand Formation be designated as a tight formation under § 271.703.

EFFECTIVE DATES: This is effective November 22, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511 of Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

Issued November 22, 1982

The Commission hereby amends § 271.703(d) of its regulations to include

the J Sand Formation located in Adams and Arapahoe Counties, Colorado, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation on August 17, 1982 (47 FR 36435, August 20, 1982),¹ based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703(c)(2)(ii) that the J Sand Formation be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the J Sand Formation meets the guidelines contained in § 271.703(c)(2). The Commission hereby adopts the Colorado recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below, effective November 22, 1982.

By the Commission.

Kenneth F. Plumb,
Secretary.

PART 271—[AMENDED]

Section 271.703(d) is amended by adding a new subparagraph (114) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(114) *The J Sand Formation in Colorado.* RM79-76-133 (Colorado-29).

(i) *Delineation of formation.* The J Sand Formation is located in Adams

¹ Comments on the proposed rule were invited and one comment supporting the recommendation was received. No party requested a public hearing and no hearing was held.

and Arapahoe Counties, Colorado, approximately 24 miles due east of the city of Denver. The J Sand Formation underlies Township 3 South, Range 62 West, Sections 17 through 20, and 29 through 32; Township 3 South, Range 63 West, Sections 13 through 36; Township 4 South, Range 62 West, Sections 5 through 8, 17 through 20, and 29 through 32; and Township 4 South, Range 63, All Sections, 6th P. M.

(ii) *Depth.* The J Sand Formation ranges in thickness from 20 to 180 feet. The average depth to the top of the J. Sand Formation is 7,700 feet.

[FR Doc. 82-32397 Filed 11-24-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-126 (Colorado-27; Order No. 268)]

High-Cost Gas Produced From Tight Formations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the Mancos "B" be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 22, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511 or Victor Zabel (202) 357-8616.

SUPPLEMENTARY INFORMATION:

Issued: November 22, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Mancos "B" Formation located in Rio Blanco County, Colorado, as a designated tight formation eligible for incentive pricing under § 271.703. The

amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued July 23, 1982 (47 FR 32730, July 29, 1982),¹ based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703, that the Mancos "B" Formation be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the Mancos "B" Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Colorado recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below, effective November 22, 1982.

By the Commission.

Kenneth F. Plumb,
Secretary.

PART 271—[AMENDED]

Section 271.703(d) is amended by revising subparagraph (112) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(112) *Mancos "B" Formation in Colorado.* RM79-76-126 (Colorado-27).

(i) *Delineation of formation.* The Mancos "B" Formation is located in the Douglas Creek Arch area of western Colorado, in Rio Blanco County. The Mancos "B" Formation underlies Township 1 North, Range 101 West, Sections 17 through 20 and 29 through 32; Township 1 North, Range 102 West, Section 7 through 9 and 13 through 36;

¹ Comments were invited on the proposed rule and one favorable comment was received. No party requested a hearing and no hearing was held.

Townships 1 North and 1 South, Range 103 West, all sections; Townships 1 North and 1 South, Range 104 West, Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36; Township 1 South, Range 102 West, Sections 1 through 10, 16 through 21, and 28 through 33; Township 2 South, Range 102 West, Sections 4 through 6; Township 2 South, Range 103 West, Sections 1 through 6, 17, 18, 20, 29, 32, and 33; and Township 2 South, Range 104 West, Sections 1 through 3 and 10 through 15.

(ii) *Depth.* The Mancos "B" Formation ranges in thickness from 150 to 325 feet. The average depth to the top of the Mancos "B" Formation is 3,000 feet.

[FR Doc. 82-32392 Filed 11-24-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-114 (Texas-23); Order No. 267]

High-Cost Gas Produced From Tight Formations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Railroad Commission of Texas that the Clearfork Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 22, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511 or Walter Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Issued: November 22, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Clearfork Formation in Pecos County, Texas as a designated tight formation eligible for incentive pricing

under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued May 25, 1982 (47 FR 23752, June 1, 1982) ¹ based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703, that the Clearfork Formation be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the Clearfork Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below, effective November 22, 1982

By the Commission.

Kenneth F. Plumb,
Secretary

PART 271—[AMENDED]

Section 271.703(d) is amended by adding a new subparagraph (113) to read as follows:

§ 271.703 Tight formation.

* * * * *

(d) *Designated tight formation.*

* * * * *

(113) *The Clearfork Formation in Texas.* RM79-76-114 (Texas-23).

(i) *Delineation of formation.* The Clearfork Formation is found in Pecos County, Texas. The designated area is located approximately 12 miles southeast of the City of Imperial, Texas, within the H&TC RR Block 2 and H&GN RR Block 9 Surveys.

(ii) *Depth.* The top of the Clearfork Formation ranges from a measured

depth of 2,900 feet in the west to 3,000 feet in the east. A typical Clearfork section occurs between the measured depths of 2,895 feet and 4,124 feet, on the well log of the George T. Abell No. 1-A Well.

[FR Doc. 82-32393 Filed 11-24-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0307]

D&C Red No. 27 and D&C Red No. 28; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of October 29, 1982, for regulations that permanently list D&C Red No. 27 and D&C Red No. 28 as color additives for general use in drugs and cosmetics.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: FDA published a final rule in the *Federal Register* of September 28, 1982 (47 FR 42566), that amended the color additive regulations by "permanently" listing D&C Red No. 27 under §§ 74.1327 and 74.2327 (21 CFR 74.1327 and 74.2327) and D&C Red No. 28 under §§ 74.1328 and 74.2328 (21 CFR 74.1328 and 74.2328). The final rule also amended § 81.1(b) (21 CFR 81.1(b)) by removing D&C Red No. 27 and D&C Red No. 28 from the provisional lists of color additives and § 81.27(d) (21 CFR 81.27(d)) by removing D&C Red No. 27 and D&C Red No. 28 from the conditions of provisional listing. Additionally, the final rule amended § 82.1327 (21 CFR 82.1327) for D&C Red No. 27 to conform the identity and specifications to the requirements of § 74.1327(a)(1) and (b) (21 CFR 74.1327(a)(1) and (b)) and amended § 82.1328 (21 CFR 82.1328) for D&C Red No. 28 to conform the identity and specifications to the requirements of § 74.1328(a)(1) and (b) (21 CFR 74.1328(a)(1) and (b)).

FDA gave interested persons until October 28, 1982, to file objections. The agency did not receive any objections or requests for a hearing on any aspect of the final rule. Therefore, FDA concludes

that the final rule published on September 28, 1982, for D&C Red No. 27 and D&C Red No. 28 should be confirmed.

List of Subjects in 21 CFR

21 CFR Part 74

Color additives, Color additives subject to certification, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701 and 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371 and 376(b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for hearing were filed in response to the September 28, 1982 final rule. Accordingly, the amendments promulgated thereby became effective on October 29, 1982.

Dated: November 17, 1982.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32179 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 172

[Docket No. 81F-0081]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Fish Protein Isolate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing those portions of the regulation on fish protein isolate that prescribe microbiological limitations for this substance when it is used as a food supplement. The agency is removing the microbiological limitations until it has had an opportunity to review the results of a National Academy of Sciences study. This action is based on objections that the agency received on a regulation published in the *Federal Register* of July 24, 1981 (46 FR 38072).

¹ Comments were invited on the proposed rule and one comment supporting the recommendation was received. No party requested a hearing and no hearing was held.

DATE: Effective November 26, 1982; objections by December 27, 1982.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Garnett R. Higginbotham, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of April 3, 1981 (46 FR 20303), FDA announced that a food additive petition (FAP 1A3538) had been filed on behalf of Concentrados Marinos, S.A., P.O. Box/Casilla 4441, Lima 100, Peru, proposing that 21 CFR Part 172 be amended by adding a new section to provide for the use of fish protein isolate as a food supplement. In the *Federal Register* of July 24, 1981 (46 FR 38072), FDA issued a final rule establishing § 172.340 *Fish protein isolate* (21 CFR 172.340) to provide for the use of this additive as a food supplement.

During the 30-day objection period, FDA received three objections. The objections came from the National Food Processors Association, 1133 Twentieth St. NW., Washington, DC; the National Fisheries Institute, 1101 Connecticut Ave. NW., Washington, DC; and the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC. They objected to the establishment of microbiological standards for fish protein isolate. The National Marine Fisheries Service requested a hearing on the subject of microbiological standards for this additive if FDA did not agree with its recommendations.

The objectors pointed out that the U.S. Department of Agriculture, the National Marine Fisheries Service, and FDA are currently funding a study by the National Academy of Sciences (NAS) to review microbiological criteria for foodstuffs and to recommend to the appropriate Federal agencies a logical and sound scientific basis for such criteria. They argued that the agency should not establish microbiological limitations until this study is completed, and the agency has had an opportunity to consider NAS's recommendations.

FDA has reviewed the issues raised by the objectors. The agency believes that even though the NAS study will not specifically address the food additive

evaluation process, it will provide important guidance for issuing appropriate specifications. Therefore, FDA has decided to delete the microbiological specifications from § 172.340(b)(5) until it has had an opportunity to study them in light of the guidance that NAS provides.

FDA has concluded that there will be no adverse effect on the public health if these specifications are deleted at this time. FDA will continue to develop fish protein isolate microbiological standards while NAS completes its study, and the agency can take regulatory action under the adulteration provisions of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) if it encounters contaminated lots of the product while the standards are being developed.

Based on the foregoing reasons, pursuant to 21 CFR 12.26, FDA is deleting subparagraph (b)(5) of § 172.340. Because the agency is modifying the regulation in response to the objections, there is no reason to grant a hearing.

List of Subjects in 21 CFR Part 172

Food additives, Food preservatives, Spices and flavorings.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

§ 172.340 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 172.340 *Fish protein isolate* is amended by removing paragraph (b)(5).

Any person who will be adversely affected by the foregoing amendment to the regulation may at any time on or before December 27, 1982, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for public hearing on the stated objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing

is requested shall include a detailed description an analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of the regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 26, 1982.

(Secs. 201(s), 409, 72 Stat. 1784-1778 as amended (21 U.S.C. 321(s), 348))

Dated: November 17, 1982.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 82-32178 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 176

[Docket No. 81F-0025]

Indirect Food Additives: Components of Paper and Paperboard in Contact With Aqueous and Fatty Foods

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of polyamine-epichlorohydrin resin as a wet strength agent for use in paper and paperboard that contact food. This action is in response to a petition filed by Monsanto Co.

DATES: Effective November 26, 1982; objections by December 27, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James B. Lamb, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of March 20, 1981 (46 FR 17886), FDA announced that a petition (FAP 8B3419) had been filed by Monsanto Co., 800 N.

Lindbergh Blvd., St. Louis, MO 63166, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of polyamine-epichlorohydrin resin as a wet strength agent in paper and paperboard that contact foods.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the contact person listed above. As provided in § 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(d), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 176 is amended in § 176.170(a)(5) by alphabetically inserting a new item in the list of substances to read as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

§ 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods.*

- (a) * * *
- (5) * * *

List of substances	Limitations
Polyamine-epichlorohydrin water soluble thermosetting resin produced by reacting an aliphatic diamine mixture containing not less than 95 percent of C ₄ to C ₆ diamines with 1,2-dichloroethane to form a prepolymer and further reacting this prepolymer with epichlorohydrin such that the finished resin has a nitrogen content of 6.6-7.9 percent and a chlorine content of 23.0-26.6 percent, on a dry basis, and a minimum viscosity, in 25 percent by weight aqueous solution, of 50 centipoises at 20° C, as determined on a Brookfield HAT model viscometer using a No. 1H spindle at 50 r.p.m. (or equivalent method).	For use only as a wetstrength agent and/or retention aid employed prior to the sheetforming operation in the manufacture of paper and paperboard, and used at a level not to exceed 1 percent by weight of dry paper and paperboard fibers.

* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 27, 1982, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 26, 1982.

(Sec. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321 (s), 348))

Dated: November 23, 1982.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 82-32539 Filed 11-23-82; 1:05 pm]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 81F-0161]

Indirect Food Additives; Polymers; Polyethylene Phthalate Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol and α -hydro-*omega*-hydroxypoly(oxy-1,4-butanediyl), as a polymer modifier in polyethylene terephthalate film intended for use in contact with food. This action responds to a petition filed by Springborn Institute for Bioresearch, Inc.

DATES: Effective November 26, 1982; objections by December 27, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of June 16, 1981 (46 FR 31519) and corrected in the issues of August 4, 1981 (46 FR 39681) and August 21, 1981 (46 FR 42531), FDA announced that a food additive petition (FAP 1B3557) had been filed on behalf of Bioresearch, Inc., Spencerville, OH 45887, proposing that § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) be amended to provide for the safe use of the polyester elastomer, 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol and α -hydro-*omega*-hydroxypoly(oxy-1,4-butanediyl), as a polymer modifier in polyethylene terephthalate film intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will

delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 177 is amended in § 177.1630 by adding new paragraph (e)(4)(v), to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *

(4) * * *

(v) Modifier:

1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol and α -hydro- ω -hydroxypoly(oxy-1,4-butanediyl) CAS Reg. No. 9078-71-1 meeting the following specifications:

Melting point: 200° to 215° C as determined by ASTM method D2117-82T, "Tentative Method of Test for Melting Point of Semicrystalline Polymers" (issued 1962), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Density: 1.15 to 1.20 as determined by ASTM method D1505-68, "Test for Density of Plastics—Gradient Technique" (revised 1968), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

The modifier is used at a level not to exceed 5 percent by weight of polyethylene terephthalate film. The average thickness of the finished film

shall not exceed 0.016 millimeter (0.0006 inch).

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 27, 1982, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 26, 1982.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 18, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Note.—Incorporation by reference provisions approved by the Director of the Office of the Federal Register on March 31, 1982, and is on file at the Office of the Federal Register.

[FR Doc. 82-32181 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 81F-0360]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Disodium EDTA

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for

the safe use of disodium EDTA (ethylenediaminetetraacetic acid, disodium salt) as a chelating agent and sequestrant in lubricants with incidental food contact. This action responds to a petition filed by Heinrich Fischer & Co.

DATES: Effective November 26, 1982; objections by December 27, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Julia L. Ho, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of December 11, 1981 (46 FR 60651), FDA announced that a food additive petition (FAP 2B3588) had been filed by Heinrich Fisher & Co., 8180 Corporate Park Drive, Cincinnati, OH 45242, proposing that the food additive regulations be amended in Part 178 (21 CFR Part 178) to provide for the safe use of disodium EDTA as a component of lubricants with incidental food contact.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement, therefore, is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s),

409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 178 is amended in § 178.3570(a)(3) by alphabetically inserting a new item in the list of substances, to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
Disodium EDTA (CAS Reg. No. 139-33-3).	For use only as a chelating agent and sequestrant at a level not to exceed 0.06 percent by weight of lubricant at final use dilution.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 27, 1982, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation becomes effective November 26, 1982.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 17, 1982.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32174 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 81-F-0398]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers, Hexadecyl 3, 5-Di-Tert-Butyl-4-Hydroxybenzoate

Correction

In FR Doc. 82-28800 appearing at page 47005 of the issue for Friday, October 22, 1982, in the table, under the heading "Substances", the CAS Reg. No. should read "67845-93-6".

BILLING CODE 1505-1-M

21 CFR Parts 430, 436, and 440

[Docket No. 82N-0306]

Antibiotic Drugs; Sterile Azlocillin Sodium

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile azlocillin sodium. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 26, 1982; comments, notice of participation, and request for hearing by December 27, 1982; data, information, and analyses to justify a hearing by January 25, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, National Center for Drugs and Biologics (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile azlocillin sodium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic

drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 440 (21 CFR Parts 430, 436, and 440) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (Proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs 21 CFR 5.10), Parts 430, 436, and 440 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.5, by adding new paragraphs (a)(75) and (b)(75) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(75) *Azlocillin*. The term "azlocillin master standard" means a specific lot of azlocillin that is designated by the Commissioner as the standard of comparison in determining the potency of the azlocillin working standard.

(b) * * *

(75) *Azlocillin*. The term "azlocillin working standard" means a specific lot of a homogeneous preparation of azlocillin.

b. In § 430.6, by adding new paragraph (b)(78) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(78) *Azlocillin*. The term "microgram" applied to azlocillin means the azlocillin activity (potency) contained in 1.128 micrograms of the azlocillin master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended by adding new § 436.336 to read as follows:

§ 436.336 Thin layer chromatographic identity test for azlocillin.

(a) *Equipment*.—(1) *Chromatography tank*. A rectangular tank, approximately 23 centimeters long, 23 centimeters high, and 9 centimeters wide, equipped with a glass solvent trough in the bottom and a tight-fitting cover for the top.

(2) *Iodine vapor chamber*. A rectangular tank approximately 23 centimeters long, 23 centimeters high, and 9 centimeters wide, with a suitable cover, containing iodine crystals.

(3) *Plates*. Use 20 x 20 centimeter thin layer chromatography plates coated with Silica Gel G or equivalent to a thickness of 250 microns.

(b) *Reagents*.—(1) *Buffer*. Dissolve 9.078 grams of potassium phosphate, monobasic (KH_2PO_4) in sufficient distilled water to make 1,000 milliliters (solution A). Dissolve 17.88 grams of sodium phosphate, dibasic, heptahydrate ($\text{Na}_2\text{HPO}_4 \cdot 7\text{H}_2\text{O}$) in sufficient distilled water to make 1,000 milliliters (solution B). Place 12.1 milliliters of solution B into a 100-milliliter volumetric flask and dilute to volume with solution A.

(2) *Developing solvent*. Place 50 milliliters of *n*-butyl acetate, 9 milliliters of *n*-butanol, 25 milliliters of glacial acetic acid, and 15 milliliters of buffer into a separatory funnel. Shake well and allow the layers to separate. Discard the lower phase and use the upper phase as the developing solvent.

(c) *Preparation of spotting solutions*. Prepare solutions of the sample and working standard, each containing 20 milligrams of azlocillin per milliliter in distilled water.

(d) *Procedure*. Pour developing solvent into the glass trough on the bottom of the chromatography tank to a depth of about 1 centimeter. Use the chamber immediately. Prepare plate as follows: Apply spotting solutions on a line 2.5 centimeters from the base of the silica gel plate and at points 2.0 centimeters apart. Apply approximately 10 microliters of the working standard solution to points 1 and 3. When these spots are dry, apply approximately 10 microliters of sample solution to points 2 and 3. Place spotted plate in a desiccator until solvent has evaporated

from spots. Place the plate into the glass trough at the bottom of the chromatography tank. Cover the tank. Allow the solvent to travel about 15 centimeters from the starting line. Remove the plate from the tank and allow to air dry. Warm the iodine vapor chamber to vaporize the iodine crystals and place the dry plate in the iodine vapor chamber until the spots are visible, usually about 10 minutes.

(e) *Evaluation*. Measure the distance the solvent front traveled from the starting line and the distance the spots are from the starting line. Calculate the R_f value by dividing the latter by the former. The azlocillin sample and the standard should have spots of corresponding R_f values (approximately 0.4), and standard and sample combined should appear as a single spot for azlocillin. The penicilloate and penilolate of azlocillin as well as ampicillin appear as additional spots with R_f values of approximately 0.15, 0.3, and 0.25, respectively.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:

a. By adding new § 440.1a to read as follows:

§ 440.1a Sterile azlocillin sodium.

(a) *Requirements for certification*.—

(1) *Standards of identity, strength, quality, and purity*. Sterile azlocillin sodium is the sodium salt of 4-thia-1-azabicyclo[3.2.0]heptane-2-carboxylic acid, 3,3-dimethyl-7-oxo-6-[[[(2-oxo-1-imidazolidinyl)carbonyl]amino]phenyl-ethyl]amino]-[2*S*-(2*α*,6*β*(*S*^{*}))]-. It is so purified and dried that:

(i) If the azlocillin sodium is not packaged for dispensing, its azlocillin content is not less than 859 micrograms and not more than 1,000 micrograms of azlocillin per milligram on an anhydrous basis. If the azlocillin sodium is packaged for dispensing, its azlocillin content is not less than 859 micrograms and not more than 1,000 micrograms of azlocillin per milligram on an anhydrous basis and also, each container contains not less than 90 percent and not more than 115 percent of the number of milligrams of azlocillin that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 2.5 percent.

(v) Its pH in an aqueous solution containing 100 milligrams of azlocillin per milliliter is not less than 6.0 and not more than 8.0.

(vi) Its specific rotation in an aqueous solution containing 10 milligrams of

azlocillin per milliliter is +170° to +200°.

(vii) It gives a positive identity test for azlocillin.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples*. In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, moisture, pH, specific rotation, and identity.

(ii) Samples, if required by the Director, National Center for Drugs and Biologics:

(a) If it is packaged for repacking or for use in the manufacture of another drug:

(1) For all tests except sterility: 10 packages, each containing approximately 300 milligrams; and 5 packages, each containing approximately 1 gram.

(2) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(b) If it is packaged for dispensing:

(1) For all tests except sterility: A minimum of 15 immediate containers.

(2) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*.—(1) *Potency*. Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except:

(i) *Dilute Brij 35 solution*. In lieu of the hydroxylamine hydrochloride solution described in § 442.40(b)(1)(ii)(b)(1) of this chapter, use dilute Brij 35 solution in the reference channel. Prepare dilute Brij 35 solution as follows: Place 1 milliliter of Brij 35, 30 percent solution, into a 1-liter volumetric flask containing 900 milliliters of distilled water. Swirl gently and dilute to volume slowly with distilled water. Mix well.

(ii) *Buffer*. In lieu of the buffer described in § 442.40(b)(1)(ii)(b)(2) of this chapter, use the buffer prepared as follows: Dissolve 200 grams of primary standard tris (hydroxymethyl) aminomethane in sufficient distilled water to make 1 liter. Filter before use.

(iii) *Preparation of working standard solution*. Dissolve and dilute an accurately weighed portion of the azlocillin working standard with sufficient distilled water to obtain a concentration of 1.0 milligram of azlocillin per milliliter.

(iv) *Preparation of sample solutions*.—(a) *Product not packaged for dispensing (micrograms of azlocillin per milligram)*. Dissolve and dilute an accurately weighed portion of the sample with

sufficient distilled water to obtain a stock solution of 1.0 milligram of azlocillin per milliliter (estimated).

(b) *Product packaged for dispensing.* Determine both micrograms of azlocillin per milligram of the sample and milligrams of azlocillin per container. Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(iv)(b)(1) and (2) of this section.

(1) *Micrograms of azlocillin per milligram.* Dissolve and dilute an accurately weighed portion of the sample with sufficient distilled water to obtain a stock solution of 1.0 milligram of azlocillin per milliliter (estimated).

(2) *Milligrams of azlocillin per container.* Reconstitute as directed in the labeling using distilled water in lieu of the reconstituting fluid. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute with distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with distilled water to a concentration of 1.0 milligram of azlocillin per milliliter (estimated).

(v) *Calculations.*—(a) Calculate the micrograms of azlocillin per milligram of sample as follows:

Micrograms of azlocillin
per milligram of sample

$$= \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100-m)}$$

where:

A_u = Absorbance of sample solution;
 P_s = Potency of working standard solution in micrograms per milliliter;

A_s = Absorbance of working standard solution;

C_u = Milligrams of sample per milliliter of sample solution; and
 m = Percent moisture in sample.

(b) Calculate the azlocillin content of the single-dose vial as follows:

Milligrams of azlocillin
per vial

$$= \frac{A_u \times P_s \times d}{A_s \times 1,000}$$

where:

A_u = Absorbance of sample solution;
 P_s = Potency of working standard solution in micrograms per milliliter;

A_s = Absorbance of working standard solution; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 100 milligrams of azlocillin per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter, using the titration procedure and calculations described in paragraph (e)(2) of that section and preparing the sample as follows: Weigh the vial. Rapidly transfer a portion of the powder into the titration vessel, add the Karl Fischer reagent and restopper the vial immediately. Reweigh the vial to obtain the sample weight. A nitrogen purged glove bag or glove box should be used for preparing the sample.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams of azlocillin per milliliter.

(6) *Specific rotation.* Proceed as directed in § 436.210 of this chapter, using an aqueous solution containing 10 milligrams of azlocillin per milliliter and a 1.0-decimeter polarimeter tube. Calculate the specific rotation on an anhydrous basis.

(7) *Identity.* Proceed as directed in § 436.336 of this chapter.

b. By adding new § 440.201 to read as follows:

§ 440.201 Sterile azlocillin sodium.

The requirements for certification and the tests and methods of assay for sterile azlocillin sodium packaged for dispensing are described in § 440.1a.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective November 26, 1982. However, interested persons may, on or before December 27, 1982, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file

objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 27, 1982, a written notice of participation and request for hearing, and (2) on or before January 25, 1983, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective November 26, 1982.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: November 12, 1982.

James C. Morrison,
Acting Associate Director for Regulatory Affairs.

[FR Doc. 82-32182 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Furosemide Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Med-Tech, Inc., providing for safe and effective use of furosemide tablets for oral treatment of dogs for edema associated with cardiac insufficiency and acute noninflammatory tissue edema.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Med-Tech, Inc., P.O. Box 338, Elwood, KS 66024, Filed NADA 129-034 providing for use of 12.5 and 50 milligrams furosemide tablets (Disal) for oral treatment of dogs for edema (pulmonary congestion, ascites) associated with cardiac insufficiency and acute noninflammatory tissue edema.

Med-Tech, Inc., submitted data from a controlled double-blind clinical study and reprints from published scientific literature to demonstrate that furosemide is safe and effective for oral use in dogs when labeled for the treatment of edema associated with cardiac insufficiency and acute noninflammatory tissue edema. Data from a dose-titration study further supported use of the product. The NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 520

Animal drugs, oral.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.1010a by revising paragraph (b), to read as follows:

**PART 520—ORAL DOSAGE FORM
NEW ANIMAL DRUGS NOT SUBJECT
TO CERTIFICATION**

§ 520.1010a Furosemide tablets or boluses.

* * * * *

(b) *Sponsor.* See No. 012799 in § 510.600(c) of this chapter for use in dogs, cats, and cattle; see No. 013983 in § 510.600(c) of this chapter for use in dogs.

* * * * *

Effective Date. November 26, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 18, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-32180 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 524

**Ophthalmic and Topical Dosage Form
New Animal Drugs Not Subject to
Certification; Selenium Disulfide
Suspension**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADA's) filed by Happy Jack, Inc., Hart-Delta, Inc., National Pharmaceutical Manufacturing Co., and Zoecon Industries, Inc., providing for a change from prescription (Rx) to over-the-counter (OTC) distribution of a selenium disulfide suspension for use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses. FDA has notified other sponsors of NADA's for selenium disulfide suspension of a need to submit similar supplemental NADA's.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Several firms filed supplemental NADA's

providing for over-the-counter distribution of a selenium disulfide suspension for use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses. The firms and NADA's are:

1. Happy Jack, Inc., P.O. Box 475, Snow Hill, NC 28580, NADA 121-556.
2. Hart-Delta, Inc., 5055 Choctaw Dr., Baton Rouge, LA 70805, NADA 111-349.
3. National Pharmaceutical Mfg. Co., Division of Barre-National, Inc., 7205 Windsor Blvd., Baltimore, MD 21207, NADA 120-646.
4. Zoecon Industries, Inc., 12200 Denton Dr., Dallas, TX 75234, NADA 103-434.

Each of the firms currently holds an approved NADA for use of the product by or on the order of a licensed veterinarian. Those approvals were based on generic equivalence to a product reviewed by the National Academy of Sciences/National Research Council (NAS/NRC) (35 FR 14168; Sept. 5, 1970), all approvals reflecting compliance with the conclusions in that review.

A selenium disulfide shampoo was originally approved as safe for use for dogs in 1952. These animal products were considered by FDA not safe for use except under the supervision of a licensed veterinarian, and the labels have been required to bear the statement, "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian." The Bureau of Veterinary Medicine (the Bureau) has determined that there is now sufficient evidence upon which to conclude that the drug can be safely and effectively used by lay persons for its intended uses and that adequate directions for lay use can be prepared.

The Bureau has reevaluated the safety data in the original application, available published literature, and drug experience reports since the product was first approved. The prescription animal products have been used approximately 30 years without adverse reactions or known abuse. The safety data indicate a very low level of toxicity for the product in humans, dogs, rats, rabbits, and mice. Reports indicate that while elemental selenium is toxic, selenium disulfide is relatively nontoxic owing to its insolubility. The oral LD₅₀ median lethal dose for 1 percent selenium disulfide suspension is about 10 times the emetic dose in dogs. Ingestion of the product produced no absorption in dogs as measured by blood selenium levels.

The Bureau has reevaluated the labeling and believes that the directions

for OTC use will be readily understandable by the laity, and that the directions are adequate for the products to be safely and effectively used by the laity for the purposes for which they are intended. Therefore, the supplements providing for over-the-counter use of a 1-percent selenium disulfide suspension for dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses are approved. The regulation is amended to reflect the approvals, and it is amended editorially to reflect current format.

The issue of whether there can be adequate direction for use of selenium disulfide shampoo for dogs by lay persons affects all selenium disulfide suspensions currently approved under § 524.2101 (21 CFR 524.2101). Because the Bureau has concluded that adequate directions for lay use can be prepared for the uses for which those products are approved, there is no longer a basis for the products to bear the veterinary Rx statement provided for in § 201.105(b)(2) (21 CFR 201.105(b)(2)) or to be exempted under § 201.105 from bearing adequate directions for use. In letters dated June 29, 1982, to each sponsor of an NADA for a product subject to § 524.2101 that had not submitted a supplemental NADA providing for OTC use, the Bureau provided notice of its conclusion that adequate directions for lay use may be written and of the need to submit promptly a supplemental NADA for OTC use. Failure to submit a supplemental NADA that conforms to the Bureau's conclusions and to the amended § 524.2101 within 90 days of the date of this document's publication in the *Federal Register* and for labeling to be appropriately amended will constitute grounds for a notice of opportunity for hearing concerning the withdrawal of approval of the NADA under section 512(e)(2)(C) (21 U.S.C. 360b(e)(2)(C)).

In accordance with the freedom of information provisions of 21 CFR Part 20 and § 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday. Requests for single copies of the summary, identified by NADA number, sponsor, product name, and publication date, should be sent to the Dockets Management Branch (address above).

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR

25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR 524

Animal drugs, Topical.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended by revising § 524.2101, to read as follows:

§ 524.2101 Selenium disulfide suspension.

(a) *Specifications.* The product contains 0.9-percent weight in weight (w/w) selenium disulfide (1-percent weight in volume (w/v)).

(b) *NAS/NRC status.* These conditions are NAS/NRC reviewed and found effective. NADA's for similar products for these conditions of use need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(c) *Sponsors.* See 000570, 011536, 015563, and 023851 in 510.600(c) of this chapter.

(1) *Indications for use.* For use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses.

(2) *Amount.* One to 2 ounces per application.

(3) *Limitations.* Use carefully around scrotum and eyes, covering scrotum with petrolatum. Allow the shampoo to remain for 5 to 15 minutes before thorough rinsing. Repeat treatment once or twice a week. If conditions persist or if rash or irritation develops, discontinue use and consult a veterinarian.

(d) *Sponsors.* See 050604 in § 510.600(c) of this chapter.

(1) *Indications for use.* For use on dogs as a cleaning shampoo and as an agent for removing skin debris

associated with dry eczema, seborrhea, and nonspecific dermatoses.

(2) *Amount.* One to 2 ounces per application.

(3) *Limitations.* Use carefully around the scrotum and eyes, covering scrotum with petrolatum and instilling boric acid ophthalmic ointment into eyes. Allow shampoo to remain for 5 to 15 minutes before thorough rinsing. Repeat at 4- to 7-day intervals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(e) *Sponsors.* See 017135 in § 510.600(c) of this chapter.

(1) *Indications for use.* For use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema and nonspecific dermatoses.

(2) *Amount.* One to 2 ounces per application.

(3) *Limitations.* Use carefully around the scrotum and eyes, covering scrotum with petrolatum and instilling boric acid ophthalmic ointment into eyes. Allow shampoo to remain for 5 to 15 minutes before thorough rinsing. Repeat at 4- to 7-day intervals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: November 26, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 17, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-32334 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Morantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing revised labeling for use of 0.44 to 4.4 grams of morantel tartrate per pound of finished cattle feed to be used as an anthelmintic.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 E. 42d St., New York, NY 10017, filed supplemental NADA 92-444

providing revised labeling for use of 0.44 to 4.4 grams of morantel tartrate per pound of finished cattle feed to be used for removal and control of mature gastrointestinal nematode infections. The current approval provides for use of 4.4 grams per pound of feed only. The drug would continue to be fed at 0.44 gram per 100 pounds of body weight.

The supplement is approved and the regulations are amended accordingly.

Approval of this supplement does not change the approved conditions of use of the drug. It permits feeding of different amounts of feed containing various drug concentrations. The animal still receives the same amount of drug. Approval did not require new effectiveness or safety data. Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in the original approval. In addition, a freedom of information summary for approval of the supplement is not required.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.360 by revising paragraph (e)(1) and (3), to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.360 Morantel tartrate.

(e) *Conditions of use.*—(1) *Amount.* 0.44 to 4.4 grams of morantel tartrate per pound of feed.

(3) *Limitations.* Feed as a single therapeutic treatment at 0.44 gram of morantel tartrate per 100 pounds of

body weight. Withhold feed overnight prior to treatment to ensure ration will be readily consumed. Fresh water should be available at all times. When medicated feed is consumed, resume normal feeding. Conditions of constant worm exposure may require retreatment in 2 to 4 weeks. Not for use in dairy cattle of breeding age. Do not treat animals within 14 days of slaughter.

Effective date: November 26, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 17, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-32175 Filed 11-24-82; 8:45 am]

BILLING CODE 4180-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary For Housing—Federal Housing Commissioner

24 CFR Parts 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242, and 244

[Docket No. R82-1054]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA interest rates on insured loans. This action by HUD is designed to bring the maximum interest rates into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: November 15, 1982.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 (202-426-4667).

SUPPLEMENTARY INFORMATION: The following amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. The maximum interest rate on HUD/FHA insured home mortgage insurance programs has been lowered from 12.50 percent to 12.00 percent for level payment (including operative builder) and graduated payment home loan programs (GPM). For insured multi-family project mortgage loan programs, the maximum interest rate has been

lowered from 13.50 percent to 13.00 percent. The maximum interest rate for multi-family construction and Title X land development loans has been lowered from 14.50 percent to 14.00 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

This is a procedural and administrative determination as set forth in the statutes and as such does not require a determination of environmental applicability.

List of Subjects in 24 CFR Parts 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242, and 244

Mortgage insurance.

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Subpart A—Eligibility Requirements

1. In § 203.20, paragraph (a) is revised to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, except that where an application for commitment was received by the Secretary before November 15, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

2. In § 203.45, paragraph (b) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, except that where an application for commitment was received by the Secretary before November 15, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 203.46, paragraph (c) is revised to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, except that where an application for commitment was received by the Secretary before November 15, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

Subpart A—Eligibility Requirements

4. Section 205.50 is revised to read as follows:

§ 205.50 Maximum interest rate.

Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum. Applications for conditional or firm commitments received on or after November 15, 1982 will be processed at the 14.00 percent rate, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

5. In § 207.7, paragraph (a) is revised to read as follows:

§ 207.7 Maximum interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

- (1) 13.00 percent per annum with respect to permanent financing;
- (2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

6. In § 213.10, paragraph (a) is revised to read as follows:

§ 213.10 Maximum interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

- (1) 13.00 percent per annum with respect to permanent financing;
- (2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

7. In § 213.511, paragraph (a) is revised to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, except that where an application for commitment was received by the Secretary before November 15, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart C—Eligibility Requirements—Projects

8. In § 220.576, paragraph (a) is revised to read as follows:

§ 220.576 Maximum interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

- (1) 13.00 percent per annum with respect to permanent financing;
- (2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

9. In § 221.518, paragraph (a) is revised to read as follows:

§ 221.518 Maximum interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee

and the mortgagor, which rate shall not exceed:

- (1) 13.00 percent per annum with respect to permanent financing;
- (2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

10. In § 232.29, paragraph (a), is revised to read as follows:

§ 232.29 Maximum Interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

- (1) 13.00 percent per annum with respect to permanent financing;
- (2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

Subpart C—Eligibility Requirement—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

11. § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum Interest rate.

(a) On or after November 15, 1982, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

12. In § 234.29, paragraph (a) is revised to read as follows:

§ 234.29 Maximum Interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, except that where an application for commitment was received by the Secretary before November 15, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

13. In § 234.75, paragraph (b) is revised to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, except that where an application for commitment was received by the Secretary before November 15, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

14. In § 234.76, paragraph (c) is revised to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, except that where an application for commitment was received by the Secretary before November 15, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart D—Eligibility Requirements—Rehabilitation Sales Projects

15. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum Interest rate.

(a) On or after November 15, 1982, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

Subpart A—Eligibility Requirements for Mortgage Insurance

16. In § 236.15, paragraph (a) is revised to read as follows:

§ 236.15 Maximum Interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

- (1) 13.00 percent per annum with respect to permanent financing;
- (2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982, will be processed at the rate specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

17. Section 241.75 is revised to read as follows:

§ 241.75 Maximum interest rate.

Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(a) 13.00 percent per annum with respect to permanent financing;

(b) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

18. In § 242.33 paragraph (a) is revised to read as follows:

§ 242.33 Maximum interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

Subpart A—Eligibility Requirements

19. In § 244.45, paragraph (a) is revised to read as follows:

§ 244.45 Maximum interest rate.

(a) Effective on or after November 15, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 14.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 15, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be

processed at the new lower rate if requested by the mortgagee.

* * *

(Sec. 3(a), 82 Stat. 113; 12 U.S.C. 1709-1; Sec. 7, Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d))

Dated: November 12, 1982.

W. Calvert Brand,

Acting Assistant Secretary for Housing—
Federal Housing Commissioner.

[FR Doc. 82-32301 Filed 11-24-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-118; Ref: Notice No. 422]

Loramie Creek Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Shelby County, Ohio, to be known as "Loramie Creek." The Bureau of Alcohol, Tobacco and Firearms (ATF), believes the establishment of Loramie Creek as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: Lori D. Weins, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 [202-566-7626].

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region

distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. Homer K. Monroe, proprietor of the Vinterra Farm Winery and Vineyard in Houston, Ohio, petitioned ATF to establish a viticultural area in Shelby County, Ohio, to be known as "Loramie Creek." In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 422, in the *Federal Register* on September 1, 1982 (47 FR 38553), proposing the establishment of the Loramie Creek viticultural area.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Loramie Creek, was well documented by the petitioner. After evaluating the petition, ATF believes that the Loramie Creek viticultural area has a unique historical identity and that the area is known by the name "Loramie Creek."

Geographical Evidence

The petition established the Loramie Creek viticultural area as a distinctive grape-growing region distinguished from the surrounding areas on the basis of soil.

The soil in the Loramie Creek viticultural area is the Glynwood-Blount Soil Association. This soil association is found on ridges and side slopes that parallel major streams and drainageways north and west of the Great Miami River. The landscape of the association is typified by mostly gently sloping to sloping topography of uplands. The major soils in this association formed in clay loam or silty clay loam glacial till. Glynwood soils are moderately well drained and mostly gently sloping to sloping. The Blount soils are somewhat poorly drained and occur on nearly level and gently sloping topography. Most areas of the association are used as cropland or pasture. The slope and a severe erosion hazard are the major limitations of the Glynwood soils for farming. Seasonal wetness and a moderate erosion hazard are the major limitations of the Blount soils for farming. Unless artificially drained, Blount soils are slow to dry out in spring.

The associations that surround the Loramie Creek viticultural area are the Blount-Pewamo Association and the

Blount-Pewamo-Glynwood Association. The basic characteristics of the Blount-Pewamo Association are level to gently sloping, somewhat poorly drained and very poorly drained soils formed in glacial till on uplands. The Blount-Pewamo-Glynwood Association is typified by level to gently sloping, somewhat poorly drained, very poorly drained, and moderately well drained soils formed in loamy glacial till on uplands.

Boundaries

The boundaries proposed by the petitioner are adopted. Although ATF believes the Loramie Creek viticultural area could be expanded, to include some adjacent areas containing the Glynwood-Blount Soil Association, we are approving the boundaries as proposed because at the present time there is no viticulture in the adjacent areas. Specific boundaries are set out in the regulatory text to § 9.62.

Miscellaneous

ATF does not wish to give the impression by approving the Loramie Creek viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Loramie Creek wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The

final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of the document is Lori D. Weins, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

List of subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.62. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

*	*	*	*	*
9.62	Loramie Creek.			
*	*	*	*	*

Par. 2. Subpart C is amended by adding § 9.62 to read as follows:

Subpart C—Approved American Viticultural Areas

*	*	*	*	*
§ 9.62 Loramie Creek.				

(a) *Name.* The name of the viticultural area described in this section is "Loramie Creek."

(b) *Approved map.* The approved map for the Loramie Creek viticultural area is the U.S.G.S. map entitled "Fort Loramie

Quadrangle, Ohio—Shelby Co.," 7.5 minute series (topographic), 1961 (photoinspected 1973).

(c) *Boundaries*: The Loramie Creek viticultural area is located entirely within Shelby County, Ohio. The boundaries are as follows:

(1) From the beginning point of the boundary at the intersection of State Route 47 and Wright-Puthoff Road, the boundary runs southward on Wright-Puthoff Road for a distance of 1½ miles to the intersection of the Wright-Puthoff Road with Consolidated Railroad Corporation (indicated on the U.S.G.S. map as New York Central Railroad);

(2) Then along the Consolidated Railroad Corporation right-of-way in a southwesterly direction for a distance of 2½ miles to the intersection of the Consolidated Railroad Corporation right-of-way with Loramie Creek;

(3) Then upstream along Loramie Creek in a northwesterly direction for a distance of approximately 3½ miles to the intersection of Loramie Creek and State Route 47;

(4) Then eastward on State Route 47 for a distance of approximately 4½ miles to the beginning point of State Route 47 and Wright-Puthoff Road.

Signed: November 10, 1982

Stephen E. Higgins,
Acting Director.

Approved: November 16, 1982.

David Q. Bates,
Deputy Assistant Secretary (Operations).

[FR Doc. 82-32362 Filed 11-24-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket H-103S]

Educational/Scientific Diving

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: OSHA is exempting scientific diving from coverage of 29 CFR Part 1910, Subpart T, Commercial Diving Operations, provided that the scientific diving is under the direction and control of a diving program utilizing a diving safety manual and a diving control board meeting certain specified criteria. Based on comments, data and other information contained in the record, OSHA has determined that there are significant differences between commercial diving and scientific diving

and that the diving programs followed by the scientific diving community have resulted in an effective system of self-regulation. OSHA believes the exemption will allow the scientific diving community to perform significant underwater scientific research activities while maintaining the safety and health of scientific divers.

EFFECTIVE DATE: This final rule becomes effective on November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Glen E. Gardner or Ms. Joanne E. Slattery, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3463, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-7225.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1976, OSHA published a notice of proposed rulemaking with respect to commercial diving operations (41 FR 48950). This proposal was published concurrently with a notice of hearing on commercial diving operations issued by the U.S. Coast Guard (41 FR 48969). Public hearings were held by OSHA, with the participation of the Coast Guard, in New Orleans, Louisiana, on December 16-21, 1976, and January 10-14, 1977. The record of this rulemaking was used in the development and promulgation of the OSHA final standard, published July 22, 1977 (42 FR 37650), and the Coast Guard's notice of proposed rulemaking, published November 10, 1977 (42 FR 58712).

The OSHA final standard for commercial diving operations, codified as §§ 1910.401-441, Subpart T of 29 CFR Part 1910, did not exempt diving operations performed for scientific research and development purposes. However, the Coast Guard proposal, which was similar in content to the OSHA final standard, proposed to exempt diving performed solely for scientific research and development purposes by educational institutions (educational/scientific diving) and retained the exemption in its final rule, published November 16, 1978 (43 FR 53683).

Since the publication of Subpart T, OSHA has received requests from various individuals and organizations to reconsider its coverage of educational/scientific diving because they believe the application of Subpart T to this type of diving is inappropriate. They have noted that it is customary for the educational/scientific diving community to follow well-established, consensual standards of safe practice. The first set of consensual standards was developed

by the Scripps Institution of Oceanography of the University of California (Scripps) in the early 1950's. In 1973, diving safety boards and committees from ten major educational institutions involved in scientific diving met and accepted the *University of California Guide for Diving Safety* as a minimum standard for their individual programs (Ex. 4:1). Therefore, it was contended that most educational institutions that had diving programs were complying with this consensual standard with limited modifications for regional and operational variations in diving before the publication of the OSHA final standard. These educational institutions pointed to their excellent safety record prior to OSHA, attributing it to the effectiveness of their self-regulation.

Additionally, they noted that significant differences exist between commercial diving and educational/scientific diving. For example, the educational/scientific diver is an observer and data gatherer who chooses the work area and diving conditions which will minimize environmental stresses and maximize the safety and efficiency of gathering data.

They noted, in contrast, the commercial diver is an underwater construction worker, builder and trouble shooter whose work area and diving conditions are determined by the location and needs of the project.

Based on the concerns expressed in these requests, OSHA published, on August 17, 1979, an advance notice of proposed rulemaking (ANPR) (44 FR 48274) to obtain additional information concerning which provisions of Subpart T were causing the most difficulty for the educational/scientific diving community, and what modifications to the Subpart should be considered. Educational institutions submitted 25 of the 51 comments that OSHA received in response to the ANPR, and were unanimous in recommending an exemption of their diving activities from coverage under Subpart T. The majority of the remaining comments supported an exemption for all segments of the scientific diving community.

Commenters recommending an exemption continued to contend that the application of Subpart T to scientific diving is inappropriate because there are very significant differences between this type of diving and commercial diving; that they have been self-regulating their scientific diving programs for more than two decades; and that their programs are patterned after those safety standards and training procedures developed for scientific

research diving at Scripps in the early 1950's. They further asserted that the Scripps model has been very effective as evidenced by their safety records. Several commenters submitted accident data associated with their diving experience to illustrate their safety record.

The responses to the ANPR, together with other information and data contained in the record, convinced OSHA that there was a significant difference between educational/scientific diving and commercial diving; that the safety record of the educational/scientific diving community represented evidence of its successful self-regulation; and, as a result, an exemption for educational/scientific diving might be justified.

Accordingly, on March 26, 1982, OSHA published a notice of proposed rulemaking to exempt from Subpart T, diving "performed solely for marine scientific research and development purposes by educational institutions" (47 FR 13005). It should be noted that the notice proposed to exempt educational/scientific diving activities only from Subpart T and not from other applicable OSHA regulations. For example, educational/scientific diving employers, like any other employers, are required to comply with 29 CFR Part 1904 concerning the recording and reporting of occupational injuries and illnesses.

Although it was proposed to exempt only educational institutions which perform scientific diving, OSHA raised the issue of whether the proposed exemption should be broadened to include the scientific diving community in general. The notice of proposed rulemaking contained the following questions in order to solicit data and information for determining if the final rule should contain exemption for other segments of the scientific diving community.

1. Should OSHA adopt the exemption provided by the U.S. Coast Guard standard (§ 197.202(a)(2)) which states that the Coast Guard standard does not apply to any diving operation "performed solely for research and development for the advancement of diving equipment and technology?"

2. Should OSHA exempt all scientific diving? If so, how should OSHA define those activities which constitute scientific diving?

3. Should OSHA only exempt scientific diving when such diving complies with an alternative standard which provides divers a comparable level of safety and health as OSHA's Subpart T standard?

Interested persons were given until May 10, 1982, to submit written

comments, views, and arguments in response to the notice of proposed rulemaking.

The International Brotherhood of Carpenters and Joiners (Carpenters Union) (Ex. 5: 3) requested a hearing and stated its objection to the proposed exemption and to the possible expansion of the exemption to other segments of the scientific diving community. The Carpenters Union suggested that in lieu of granting an exemption to the scientific diving community, employers should seek a variance from Subpart T under section 6(d) of the Occupational Safety and Health Act.

On May 26, 1982, OSHA published a notice (47 FR 22972) extending the comment period, as requested by the American Academy of Underwater Sciences (Ex. 5: 46), to June 18, 1982, and scheduling an informal public hearing to be held June 29-30, 1982, in Washington, D.C., and to continue in Los Angeles, California, July 7-9, 1982. The purpose of the informal public hearing was to receive testimony on whether OSHA should grant an exemption from the commercial diving standard for educational/scientific diving, the nature of any exemption and whether the scope of the exemption should be broadened to include other segments of scientific diving. In addition to the general issue as stated above, OSHA invited testimony on the appropriateness of the section 6(d) variance mechanism in dealing with the scientific diving question.

The Administrative Law Judge presiding at the hearings allowed 15 days from the completion of the hearing on July 9, 1982, to submit post-hearing comments, and another 15 days for filing arguments and briefs relating to the hearing issues. The Administrative Law Judge certified the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health on September 3, 1982.

In this preamble, OSHA identifies exhibits submitted to Docket H-103S with parentheses (Ex. 5). Comment numbers follow the exhibit in which they are contained (Ex. 5: 24). If more than one comment within an exhibit is cited, the comment numbers are separated by semicolons (Ex. 5: 24; 102). The page number (p.) is also cited if other than page one. The transcript of the hearing (Tr.) is cited by page (Tr. 72).

II. Summary and Explanation of the Final Rule

This section includes an analysis of the record of evidence and the policy considerations underlying the issuance of this final rule.

OSHA received 164 written comments in response to the notice of proposed rulemaking (47 FR 13005). The comments were submitted by educational institutions, private companies, public agencies, associations, a union, and individual scientific divers. They represent a variety of geographical locations including the Virgin Islands, New York, Massachusetts, Washington, Oregon, California, Hawaii, Texas, Florida, Rhode Island, North Carolina, Virginia, and Maryland.

The transcript of the hearing consists of more than 600 pages of testimony. Nine post-hearing exhibits were submitted, consisting of post-hearing comments, arguments, or briefs.

As indicated above, the notice of proposed rulemaking proposed to exempt diving performed solely for "marine" scientific research and development purposes. However, numerous commenters (e.g., Ex. 5: 13; 42; 76; 117; 142) pointed out that "marine" should not be included in the exemption.

For example, the Vice Chancellor for Faculty and Staff at the California State University and Colleges (Ex. 5: 13) noted:

We would like to suggest however, that the word "marine" be dropped since it may be misconstrued as referring only to ocean related diving while much scientific research and development diving * * * is carried out in lakes, rivers, etc.

The Environmental Health and Safety Officer for the University of California, Berkeley (Ex. 5: 69) remarked:

Many important scientific research projects are conducted in lakes and streams and may not be included in the exemption. I believe that this is not the intent of the modification.

It was not OSHA's intention to draw such a distinction and therefore the word "marine" is not included in the final exemption.

When the proposal was published, the record contained information concerning exemption of the scientific diving community in general and not just scientific diving performed by educational institutions. Thus, in the notice of proposed rulemaking as discussed above, OSHA asked if all scientific diving should be exempted. In response to this question, the vast majority of the comments, as well as hearing testimony, addressed this broader issue of exempting all scientific diving from the standard for commercial diving operations.

Commenters noted that the scientific diving community includes more than just educational institutions; that regardless of who is performing the diving, scientific diving is different from

commercial diving; and that an effective system of self-regulation, modeled after the Scripps program, is evidenced by an exemplary safety record and exists throughout the scientific diving community. Over 135 commenters and many witnesses at the hearing supported an exemption for all scientific diving. The following commenters are representative of those supporting an exemption for all scientific diving.

A scientific diver from California's Department of Fish and Game (Ex. 5: 7 p.2) stated:

I * * * believe that OSHA should exempt all scientific diving from Subpart T. The consensual standard developed by the scientific community represents decades of accumulated wisdom and experience of the divers themselves, including those in private, governmental, and educational organizations, and has resulted in an excellent safety record.

Another scientific diver (Ex. 5: 76) indicated:

* * * I strongly urge that this exemption be extended to include all scientific diving. The scientific diving community as a whole (including not only educational institutions but also governmental and private institutions conducting scientific research) has been effectively self-regulated since the inception of scientific diving. Virtually all scientific diving operations (public and private) have adopted a consensual standard of safe practices based upon the Scripps Institution of Oceanography Manual for Diving Safety. The efficacy of this consensual, self-regulatory approach has been attested to by the excellent safety record* * *

A scientific diver from the University of Southern California (Ex. 5: 135) stated:

Our present system, which has a long and successful record for insuring diver safety, should be allowed to remain in effect. This should include all scientific diving, freshwater and marine, through educational and research institutions, since this is the domain in which the system has worked to date. The present system has the respect of the scientists, is responsive to our research needs, yet has proven itself by providing a remarkably safe environment for underwater research.

The President of MBC Applied Environmental Sciences (Ex. 5: 137A p. 2) remarked:

OSHA should exempt all scientific diving. The first generation of scientific divers developed a set of consensual safety standards more than two decades ago at a single institution, Scripps. Today those same basic standards have been refined and spread nationwide by recipients to include academic and private research organizations, state, local, and the federal government. This wide acceptance is a result of demonstrated safety for the individual and it is not employer-specific.

Based on the overwhelming support from comments and hearing testimony, as well as other information contained in the record, OSHA believes that an exemption is justified for all scientific diving, not solely scientific diving performed by educational institutions. Additionally, based on the record and discussed later in this notice, OSHA has specified conditions that scientific diving programs must meet before members of the scientific diving community may avail themselves of the exemption. Therefore, OSHA has broadened the exemption to include all segments of the scientific diving community.

The following narrative discusses the reasons and conclusions reached by OSHA for exempting the scientific diving community from Subpart T. Members of the scientific diving community contended that the application of Subpart T to scientific diving is inappropriate, since the tasks performed by commercial divers are different than those performed by scientific divers (e.g., Ex. 5: 1; 19; 67; 105; 156), (e.g., Tr. 59-60, 232, 358, 568-569). For example, the campus Diving Officer from the University of California, Santa Barbara (Tr. 568) stated:

What the individual does when he or she reaches the worksite is where the distinction should be made. Scientific divers do not use explosives, we do not get involved in shipwrecking, we do not get involved in heavy salvage. We are involved in studying animals and plants and living organisms in their environment.

The Diving Safety Officer from Moss Landing Laboratories (Tr. 358) noted:

* * * I believe that scientific divers are a completely and entirely different class of divers with respect to working conditions, tools and equipment used and risk exposure. Commercial divers typically are involved in underwater construction, repair and maintenance, often in emergency capacity under potentially hazardous conditions. In contrast is the scientific diver who gathers specimens, conducts experiments, photographs the environment, and in general only uses lightweight simple tools underwater.

The President of MBC Applied Environmental Sciences (Tr. 337-337A), in reference to Subpart T, remarked:

These regulations were intended for the commercial diving industry, plainly, and is pointed out in the original emergency temporary standard, supporting documentation, published in the **Federal Register** * * *

The scientific diving community does not engage in the shipbreaking, salvage or related kinds of activities as pointed out in that document. Nor does it use generally oxy or cutting equipment, electric arc welders or explosive devices.

However, the Carpenters Union, and others, expressed the concern that it may be difficult to clearly distinguish commercial diving operations from scientific diving operations. From this perspective, the Carpenters Union contended that an exemption which was too broad could result in commercial diving operations being characterized as scientific diving operations and might possibly deny the protection afforded by Subpart T to its members. The representative of the Carpenters Union (Tr. 98-99) asserted:

* * * we have had, from the very beginning, a great concern that in approaching this problem—in not a careful manner, that OSHA could draft an exemption that would be so broad that it would deny protection under a standard that we worked many years to develop, to many of our members who are working in the commercial diving community.

The Business Representative from the Pile Drivers (associated with the Carpenters Union), Local 34, (Tr. 287) stated:

No clear distinction between segments of the diving community exist(s).

We have members of our organization who by the nature of their mobility and qualification blur any distinction between the segments within the diving community.

Based on the comments and other information contained in the record, OSHA believes, and the final rule recognizes, that the tasks performed by commercial divers are different than those performed by scientific divers. Commercial diving activities necessitate the use of heavy tools and include such tasks as placing or removing heavy objects underwater, inspection of pipelines and similar objects, construction, demolition, cutting or welding, or the use of explosives.

In contrast, the sole purpose of scientific diving is to perform scientific research which includes such tasks as scientific observation of natural phenomena or responses of natural systems, and gathering data for scientific analysis. The tasks performed by scientific divers are usually light, short in duration, and if any handtools are used, they are usually no more than simple non-powered handtools such as screwdrivers and pliers.

Because of the differences in tasks performed, OSHA believes that clear distinctions can be made between scientific diving and commercial diving and has incorporated these distinctions in the definition of "scientific diving" in the final rule. As will be discussed below, OSHA believes that its definition of "scientific diving" addresses the concerns expressed by the Carpenters

Union and others as to limiting the scope of the exemption, and virtually eliminates the potential for overlap and confusion between scientific diving and commercial diving.

Members of the scientific diving community stated that their effective system of self-regulation is the major reason why scientific diving operations should be exempted from Subpart T. It was asserted that this diving community has been effectively self-regulated for approximately three decades, and that its scientific diving programs are modeled after the Scripps program developed in the early 1950's. The Deputy Director of the Scripps Institution of Oceanography of the University of California, San Diego (Ex. 5: 125 pp. 1.2) expressed his belief of why the system has been so successful:

I believe that a major factor in the success of the Scripps program has been that it is a program formulated, monitored, and enforced by working divers at the institution with the assistance of diving physiologists and safety officers. It is one matter for a diver to answer for an infraction to an outside regulatory agency and another matter to answer to one's peers. The fact that individual divers are involved in rulemaking and enforcement of rules that by consensus have been designed to safeguard divers in general and in the specific circumstances of scientific diving require each diver to examine the potential for misadventure in all of his diving activities.

I note with considerable pride that the Scripps diving safety program, including our manual for diving safety and our Diving Control Board, has become the prototype for most institutional diving safety programs here and abroad.

The majority of commenters (e.g., Ex. 5: 9; 28; 60; 102; 137; 162) as well as witnesses at the hearing (Tr. 33, 163, 321A, 531) favored this system of self-regulation because it is formulated, monitored, and enforced by working divers.

For example, a research specialist from the University of California, Santa Barbara (Ex. 5: 22) stated:

Our local Diving Control Board continually monitors diving activity, both to insure compliance with the Manual for Diving Safety and to review for any needed updates to provide greater safety. This peer review of dive operations has been very effective. The combined expertise of practicing scientific divers which has been accumulated and put into practice through this system has made it one of the best systems that I am aware of.

The Chairman of the Diving Safety Board at the State University of New York at Stony Brook (Ex. 5: 27) indicated:

All diving operations are subject to peer review and oversight on an ongoing basis to ensure compliance with the regulations of the manual in all aspects of the project.

A scientific diver from California State University (Ex. 5: 35) noted:

Our scientific diving program (about 500 to 800 dives per year) has never had any accidents or incidents. All scientific diving activities, including the certification of divers in our program, are regulated by our Diving Control Board which used a peer review system.

The Diving Officer from Moss Landing Laboratories (Ex. 5: 42) remarked:

We have a diving control board that consists of the diving officer, diving control chairman, environmental health and occupational safety officer, and four elected divers from our laboratory. Their responsibilities include peer review of all diving operations, the issue, reissue or revocation of diving certificates, changes in policy and amendments to the diving safety manual, and training and annual recertification of divers. I feel that it is important to stress the fact that our diving control board is made up of divers themselves, who have effectively self-regulated our diving program for the past 15 years.

A commenter from Oregon State University (Ex. 5: 59) observed:

Our diving safety record has been outstanding. Our manual for diving safety (a descendant of the Scripps diving regulations) is continually updated to remain abreast of current technology. The University Diving Control Board oversees all diving activities to insure compliance with accepted diving safety standards. The Diving Control Board conducts peer review of the diving operations and requires diver certification.

Based on the comments and testimony concerning this issue, OSHA is convinced that the elements of the Scripps program are responsible for the scientific diving community's effective system of self-regulation. As will be discussed later in this notice, OSHA, as well as the scientific diving community itself, believes that certain elements derived from the Scripps program must be followed to continue the scientific diving community's effective system of self-regulation.

Members of the scientific diving community also asserted that the excellent safety record of their diving community is evidence of effective self-regulation. Over 90 commenters and most of the witnesses testifying at the hearings (e.g., Tr. 33, 175, 478, 558) discussed their accident and injury experience to illustrate the safety record of their diving programs.

For example, a commenter from Massachusetts Institute of Technology (Ex. 5: 26) stated:

Available information does not support the need for more regulatory controls where self-regulation based on established prudent practices has resulted in an exemplary accident/injury record. The MIT Safety

Office, for at least the last twenty one (21) years, has not received a single report of injury or illness to any of our employees who dive for research/scientific purposes. To my knowledge, this includes three hundred (300) dives per year. * * *

A scientific diver from the University of California, Santa Barbara (Ex. 5: 44) discussed his part in their program:

I have had no accident or near-accident in 11 years of regular diving to do scientific research sanctioned by the University. My exemplary safety record, I believe, is the result of our well-conceived standards which we divers, ourselves, have developed and updated.

The Pacific Gas and Electric Company diving safety record (Ex. 5: 74) was also described as follows:

Pacific Gas & Electric employees have performed underwater research activities since 1973, logging approximately 3,500 dives with an accrued time of approximately 2000 underwater hours. In that time there has never been a diving accident or incident.

The Director of the Institute of Marine Resources of the University of California (Ex. 5: 117 p.2) stated:

The University of California's diving safety standards are self imposed. The overall effectiveness of self regulation through self-imposed underwater diving safety standards and regulations is proven by the fact that our students, faculty, researchers, and their assistants who have need to dive have completed more than 80,000 dives between 1955 and 1982 with only one pressure-related injury reported.

A comment from the University of Michigan (Ex. 5: 122) remarked:

The safety record of the University of Michigan is representative of our scientific diving community. During the period of 1960-1981 University of Michigan academic, scientific, and technical personnel participated in and/or supervised more than 16,000 person dives (or pressure exposures) without incidence of employee injury other than a few minor ear infections and superficial abrasions or sea urchin spine type injuries.

Marineland (Ex. 5: 127) indicated:

For the past 27 years, Marineland has made over 82,000 scheduled in-house and open ocean dives, with no diving related deaths or pressure related injuries.

Finally, a research scientist from the University of California (Ex. 5: 148) described his experience:

More than 5,000 dives have been made under my direction in these research efforts * * * None of my divers has had an accident related to pressure or from any other cause.

The Pile Drivers expressed concern that OSHA might decide to grant an exemption to the scientific diving community based solely on their safety

record. The Business Representative for the Pile Drivers (Tr. 286B) stated:

* * * it is our understanding that those who seek to become exempt from OSHA regulations have an honorable safety record which (I would like in that) respect to commend them on that point. And, as for the safety record, it is something to be proud of. However, it is not reason enough to be exempt * * *

Additionally, the Carpenters Union questioned the analysis of the data submitted to the record which was used to describe the safety record of the scientific diving community (Tr. 102-106), (Ex. 23). For example, after its analysis of the data, the Carpenters Union contended that the scientific diving community has a high fatality rate compared to other industries. In evaluating the data, the Carpenters Union used data from a 1974 study (Ex. 19) which estimated the educational/scientific diving population. A more recent estimate (1980) submitted to the record (Ex. 4: 2) indicated this diving population to be much larger. If the fatality rate were calculated using the larger diving population, the fatality rate, while much lower than that computed by the Carpenters Union, could still be a cause for concern.

The Carpenters Union, compared the scientific diving fatality rate to fatality rates calculated by the Bureau of Labor Statistics (BLS) for large industry divisions which only include workplaces with 11 or more employees. The BLS fatality rates do not reflect the total number of fatalities in those industry divisions because of the number of smaller workplaces that are not included in their survey. The data used by the Carpenters Union encompasses virtually all of the scientific diving workplaces regardless of the number of employees per workplace. Therefore, a comparison between the Carpenters Union fatality rates and BLS's rates is inappropriate. Even if a comparison were meaningful, BLS has indicated that large sampling errors exist in their fatality rate estimates.

OSHA also believes that numbers of fatalities alone may not accurately represent or reflect the risks involved in an occupation. The total numbers of injuries and illnesses must also be considered in evaluating the safety record of an industry. In this regard, OSHA conducted an analysis of the data which considered all aspects of the safety record of the scientific diving community, i.e., number of injuries, illnesses, and fatalities.

The methodology which OSHA used in evaluating the injury and illness experience of the scientific diving community is the same methodology

BLS utilizes for determining industry incidence rates. The BLS methodology of determining incidence rates is a nationally recognized method which includes fatalities, illnesses and injuries in the evaluation of the safety experience of an industry. For purposes of calculating incidence rates, each annual survey conducted by BLS covers workplaces of all sizes, and is not limited to workplaces with 11 or more employees. This method permits a valid comparison between industries regarding their incidence rates.

OSHA received incidence data from the scientific diving community through a survey performed for OSHA under a 1980 contract (Ex. 4: 2). This survey has since been updated (Ex. 15A) to include 88 institutions with a diving population of 5,441 covering an approximate period from 1965 through 1981.

The survey revealed four deaths and 18 pressure-related accidents during the period studied. As discussed at the hearing (Tr. 480), however, data more recently compiled by the University of Rhode Island (URI) reported an additional two deaths. Additionally, eight cases of suspected decompression illnesses and seven cases of minor ear problems were reported during this same period (Ex. 5: 151 p. 4). Although exposure time is lacking for several of these incidents, and not all of these incidents are OSHA-recordable, OSHA has included all reported fatalities and injuries for the purpose of computing an incidence rate. This results in a total of 39 incidents (six deaths and 33 injuries/illnesses).

In evaluating the data concerning the safety record of the scientific diving community, OSHA has used the BLS incidence rates contained in its annual survey for 1979 (Ex. 4: 8) for comparison to industry divisions and single industries. The BLS occupational incidence rates are computed on the basis of 100 workers each working 2,000 hours a year. The formula is as follows. $(N/EH) \times 200,000 = \text{incidence rate per 100 full-time workers where—}$

N=number of injuries and illnesses (including deaths) or lost workdays
EH=total hours worked by all employees during calendar year
200,000=base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year)

As stated, the survey consisted of a diving population of 5,441 (Ex. 15A). Even assuming that all 39 incidents occurred in one year, instead of over 15 years as reported, the incidence rate would be:

$$(39/(5441 \times 2000)) \times 200,000 = .7$$

Further, assuming that all 39 incidences were attributable only to educational/scientific divers with a population of 2340 (an early 1970's estimate (Ex. 19)), which of course they are not, the incidence rate would be:

$$(39/(2340 \times 2000)) \times 200,000 = 1.66$$

Finally, if the 39 incidents are averaged over a 15-year period using the diving populations explained above, the incidence rates would be:

$$(2.6/(2340 \times 2000)) \times 200,000 = .1$$

$$(2.6/(5441 \times 2000)) \times 200,000 = .04$$

Any of these incidence rates compare very favorably with the following rates from other industry divisions and industries with low incidence rates (Ex. 4: 8):

Divisions and industries	BLS 1979 incidence rate
Private sector	9.5
Manufacturing	13.3
Construction	16.2
Mining	11.4
Banking	1.7
Educational services	3.3

OSHA believes that this favorable comparison of incidence rates, along with other data contained in the record, is, indeed, evidence of an effective system of self-regulation by the scientific diving community. OSHA further believes that this effective system of self-regulation mitigates risks associated with scientific diving and, therefore, increased risks to scientific divers would not result if removed from coverage under Subpart T.

One of the issues addressed in this rulemaking concerns the appropriateness of the scientific diving community seeking an exemption, rather than a variance, from Subpart T. The Carpenters Union remarked that an exemption from the OSHA standards would be unprecedented by making a broad incursion into a safety standard without considering the variance alternative.

OSHA would like to note that exemptions to OSHA standards based on differences in hazards and exposure are not uncommon. Indeed, as an example, OSHA has previously exempted instructional diving using SCUBA from Subpart T because the following distinctions could be made between diving instructors and commercial divers: instructors are student oriented; they have the choice of the dive site; and, they do not utilize heavy construction tools, handle explosives, or use burning and welding tools. Additionally, instructors are

rarely exposed to adverse sea states, temperature extremes, great depths, poor visibility, or heavy workloads (42 FR 37650). Based on these differences, OSHA determined that instructional diving should be exempted from the standard for commercial diving operations.

Similarly, although scientific diving was originally included in the standard for commercial diving operations in 1977, OSHA now believes that a substantial basis exists in the record of this rulemaking, also to exempt scientific diving from the standard for commercial diving operations. Further, OSHA believes that the conditions to be imposed on scientific diving programs under the final exemption will assure that the protections provided by the Occupational Safety and Health Act are maintained.

The representative for the Carpenters Union (Tr. 99) in discussing the variance procedure stated:

From the very beginning, we have taken the position that if the scientific community is stating that they have an equally protective system, so far as we know, the variance procedure is the appropriate procedure under the OSHA Act to offer an equally protective system so that persons who would seek to avoid the intention of the Act and who can characterize themselves as scientists, but don't comply with any set of rules, would not be allowed lawfully to function and violate the Act through an improperly or overly broad definition.

However, members of the scientific diving community contended that it would be more appropriate to exempt scientific diving operations from Subpart T rather than obtaining a variance because a variance would do no more than require compliance with an alternative standard, which they have effectively done, voluntarily, for more than three decades.

A witness at the hearing (Tr. 35, 37) stated:

* * * by definition, the variance would be to operate under an alternative standard . . . the alternative would be the standard we have been the authors and custodians of for three decades. Why then, since the consensual mechanism is in place, and its success as shown by the safety record is clear, should the federal government, or anyone else, wish to intervene or replace it with a standard such as Subpart T, which is so demonstrably flawed for our purposes?

* * * the enormous expenses involved simply to continue something which has been ongoing in a safe and healthful way, would result in a number of terminated programs. This would be a disaster of the first magnitude for the United States. The programs we represent focus on the individual as being trained to assume responsibility for his or her own safety. This system has worked remarkably well. No

amount of federal rulemaking, either directly or under a variance, can add one iota to this philosophy or to extend the safety record.

Members of the scientific diving community expressed concern that the time involved in obtaining a variance, the resultant delays in carrying out research activities, as well as the costs involved in obtaining a variance or in requesting modifications of variances might curtail or eliminate important research projects and thus be detrimental to their scientific research programs (e.g., Tr. 35, 53, 184-185, 212-213, 547-548).

For example, the Chairman of the Diving Safety Board at the University of New York at Stony Brook (Tr. 210) stated:

* * * it is my position that this would be a needless and expensive burden that literally all institutions conducting scientific diving would be forced to undertake since all would require a variance regardless of the size of their operations, perhaps even on a project-by-project basis, this mechanism is not appropriate to this situation given that large numbers of institutions have been identified as conducting scientific diving projects.

In my own case with limited research funds and a budget cycle that operates annually, a delay of a minimum of three months for a variance will effectively stop my funding.

Finally, a scientific diver from the University of California, Santa Cruz (Ex. 5: 150) observed:

* * * the Carpenters Unions suggestion that OSHA should grant a variance instead of an exemption for scientific diving seems based on the misconception that it is the scientific employers who are requesting exemption. In fact, the pressure for exemption comes primarily from the employees, the divers themselves who have developed the consensual scientific diving standards for their own safety, and largely independently of the administrative structure of the institution to which they belong.

OSHA believes that the variance procedure would place additional unnecessary burdens on all parties involved since each employer seeking relief from Subpart T would have to obtain a variance whether on an individual basis or as a part of a group. Completion of the variance procedure may take 120 days and in some cases a year or more. The amount of time involved in processing variance requests, as well as the potential number of variances which may have to be obtained, could significantly limit scientific diving programs conducted by scientific organizations.

OSHA is convinced that it can provide more comprehensive relief to the scientific diving community through rulemaking than it could through a multiplicity of variance applications. Further, by delineating both the scope of

scientific diving and the conditions upon which exemption rests, OSHA is assuring that exemption is attained only by limited category of operations, and only under carefully prescribed conditions.

OSHA received substantial comment in the rulemaking record on the question of how the term "scientific diving" should be defined in the final rule. Many commenters and witnesses recommended the adoption of the California OSHA (CAL/OSHA) definition for scientific diving (e.g., Ex. 5: 27; 61; 102; 155), (e.g., Tr. 46, 182, 353). Additionally, a post-hearing comment representing the membership of the American Academy of Underwater Sciences (AAUS) (Ex. 25) supported a definition of scientific diving which was an extension of the CAL/OSHA definition.

Both the CAL/OSHA definition and the definition supported by AAUS distinguish between scientific diving and commercial diving by focusing on who is performing the diving, rather than on the tasks being performed. For example, CAL/OSHA defines scientific diving as "all diving performed by employees necessary to, and part of a scientific research or educational activity; in conjunction with a project or study *under the jurisdiction of any public or research or educational institution or similarly recognized organizations, departments, or groups.*" (emphasis added)

The definition for scientific diving suggested by AAUS would extend the CAL/OSHA definition to include additional criteria with respect to who is performing the diving and, additionally, requirements to assure compliance with the scientific diving community's system of self-regulation.

Although OSHA agrees with the need to make a clear distinction between scientific diving and commercial diving, the agency believes that its definition of scientific diving should focus primarily on the types of tasks performed and the objectives to be attained. The record reflects that it is the actual work being performed that forms the basis for distinguishing scientific from commercial diving.

Further, the Carpenters Union (Tr. 99) expressed concern that OSHA might develop a definition for scientific diving that would be overly or improperly broad which would allow persons who seek to avoid the intention of the Occupational Safety and Health Act to characterize themselves as scientific divers. OSHA agrees that a definition should not be overly or improperly broad and believes that this concern is

addressed by focusing on the tasks of the diver in the definition.

Accordingly, the OSHA definition in the final rule states that scientific diving means "diving performed solely as a necessary part of a scientific, research, or educational activity by employees whose sole purpose for diving is to perform scientific research tasks." For added clarity, the definition gives examples of tasks that would be considered to be commercial and not scientific diving, even if they were performed by a scientific diver. Thus, if an employee was diving for the purpose of scientific observation of marine life and, in addition, was also inspecting a pipe for cracks, the exemption would not apply since the *sole* purpose of the dive would not be scientific research.

OSHA's definition of scientific diving, by focusing on tasks performed, makes no distinction between scientific diving performed for profit or non-profit. The scientific diving community consists of various types of entities such as educational institutions, governmental organizations and private concerns, all of which have contributed to the scientific diving community's safety record. Commenters (e.g., Ex. 5: 81; 122; 155) and witnesses at the hearing (Tr. 57, 164, 182, 214, 236, 338A, 571) noted that those who perform legitimate scientific diving, whether it is for profit or non-profit purposes, and follow consensual guidelines, should be covered by the exemption. OSHA agrees that if the sole purpose for diving is to perform scientific research tasks, then further distinctions are not justified.

The Carpenters Union expressed concern that programs may exist that do not follow the scientific diving community's system of self-regulation (Tr. 194). A representative of the American Academy of Underwater Sciences indicated that if such programs do exist, they would be imprudent programs (Tr. 194). OSHA agrees that such programs would be imprudent and believes that scientific diving programs must meet certain conditions in order to qualify for the exemption. In particular, OSHA wishes to assure that programs are in conformance with the Scripps concepts and that they continue to adhere to the community's effective system of self-regulation. Further, representatives of the scientific diving community indicated at the hearing (Tr. 46-48, 182, 208, 215-216, 236, 326, 353-353A, 444, 453, 470-472, 519-520, 570) and in a post-hearing comment (Ex. 25) that conditions placed on the exemption would be beneficial to the scientific diving community in preserving the integrity of their programs.

Therefore, the final rule sets forth elements which a scientific diving program must have in order to be exempted from Subpart T. These elements are based on the Scripps program and also reflect recommendations and criteria derived from the comments and diving safety manuals submitted to OSHA (e.g., Ex. 5: 27; 39; 49; 73; 127; 137B; 142). These conditions will assure that the reasons for exemption continue.

First, the diving program shall have a diving safety manual which includes at a minimum, procedures covering all diving operations specific to the program; procedures for emergency care, including recompression and evacuation; and criteria for diver training and certification.

OSHA believes that a diving safety manual is essential for any diving program. The record demonstrates that scientific diving programs maintain their own diving manual tailored to the needs of their programs.

Second, the program shall include a diving control board with the majority of its members being active divers and which shall at a minimum have the authority to approve and monitor diving projects; review and revise the diving safety manual; ensure compliance with the manual; certify the depths to which a diver has been trained; take disciplinary action for unsafe practices; and assure adherence to the buddy system for SCUBA diving.

As indicated above, the diving control board must assure adherence to the buddy diving system for SCUBA diving. The buddy diving system means a diver is accompanied by and is in continuous contact with another diver in the water. The buddy diving system is a fundamental practice followed by the scientific diving community (e.g., Ex. 5: 29A2; 61; 72; 137B), (e.g., Tr. 203-204, 319-319A, 451, 511) and is based on mutual assistance. The California Advisory Committee on Scientific and Technical Diving (Ex. 4: 3) stated that "by being together in buddy pairs, these divers can recognize and solve minor problems before they develop into emergencies. If an emergency should develop, a buddy can render aid immediately."

The Director of the Division of Diving Control of the University of California, Berkeley (Ex. 5: 143 p 2) remarked:

The buddy system, a cornerstone in scientific diving practice, means that I will take care of you and protect your life and you will take care of me.

OSHA believes that the scientific diving community's prohibition of solo diving and its reliance on the buddy

diving system for SCUBA diving (the primary diving mode used in the scientific diving community (Ex. 4: 3)), had enhanced the safety of the scientific diver and is reflected in the scientific diving community's safety record. Therefore, OSHA has determined that the buddy diving system should be included in the conditions for exemption.

For the reasons discussed above, OSHA believes that the diving control board with its system of peer review is essential to the safety of diving operations. Therefore, a scientific diving program will not be exempted from Subpart T unless it has a diving control board which exercises authority over the program, as set forth above.

In conclusion, based on the record of this rulemaking and the above discussion, OSHA believes that these conditions are both feasible and necessary.

OSHA raised two other issues in the notice of proposed rulemaking. One concerned the adoption of the Coast Guard exemption of diving performed solely for research and development for the advancement of diving equipment and technology. Many commenters suggested that such an exemption would bring greater consistency to the Coast Guard and OSHA standards. However, no supporting data were provided to demonstrate that such an exemption is necessary. Therefore, OSHA believes there is no need to provide this separate exemption.

The final issue raised by OSHA concerned whether OSHA should only exempt scientific diving when such diving complies with an alternative standard. The majority of those who commented on this issue rejected it (e.g., Ex. 5: 27; 48; 78; 102; 127; 152). Since the scientific diving community has maintained an effective system of self-regulation, they contend that promulgation of an alternative OSHA standard will not increase diver safety. They believe that if they are allowed to follow their own Scripps-type programs that have safety as their main purpose, this will continue to serve the purposes of the Occupational Safety and Health Act. For example, the Vice Chancellor for Faculty and Staff Affairs at the California State University and Colleges (Ex. 5: 13 p.3) stated:

The scientific community has developed and been in conformance with safety standards based on the practical experiences of the divers themselves long before OSHA. Exemption from OSHA does not mean that the community will be without safety standards for the scientific community will continue a long established practice which

has resulted in a nearly perfect safety record. The self-imposed safety standards and procedures will continue to be regularly updated, revised, and applied to specific geographical problems. This flexibility to meet technological changes and the special requirements of specific geographical areas must be retained by the scientific community. We feel that OSHA diving regulations are not remotely comparable to those of the scientific diving community for purposes of the individual diver's safety and health.

A research diver from the University of California, Santa Barbara (Ex. 5: 22 p.2) remarked:

An alternative already exists, in the form of the presently used scientific diving consensual standard. No constructive purpose will be served by taking responsibility for this standard away from the user group especially since they have accumulated a safety record which is a standard in itself.

A commenter from Occidental College (Ex. 5: 111 p.2) stated:

*** we reject the notion that OSHA only exempt scientific diving when such diving complies with an alternative standard comparable to OSHA's Subpart T standard. Without question, the present scientific diving standard is continuously amended in response to technological advances as well as to developments in underwater physiology. By utilizing a flexible and evolving diving standard, the scientific diving community is assured of a standard that conscientiously focuses on providing maximum safety and health.

The Diving Officer for Old Dominion University (Ex. 5: 120 p.2) indicated:

Question 3 is confusing to me, as the scientific educational community has had diving regulations for three decades and OSHA now is saying we are the "alternative". Our standards have been molded and shaped over the years based on experience, study, etc., and they work.

The Diving Officer from Scripps Institution of Oceanography of the University of California, San Diego (Ex. 5: 142 pp. 2-3) remarked:

The scientific community has developed and been in conformance with safety standards based on the practical experiences of the divers themselves long before OSHA. Exemption from OSHA does not mean that the Community will be without safety standards, for the scientific community will continue a long established practice which has resulted in a nearly perfect safety record.

A research diver from the University of California (Ex. 5: 148 p.2) noted:

This question is biased and difficult to answer because, as far as I am concerned, OSHA has tried to develop an alternative standard which I find much less satisfactory than the safety codes which already exist for all U.S. scientific divers.

Finally, the President of the American Academy of Underwater Sciences (Ex. 5: 153 p. 3) stated:

We consider the issue of whether OSHA should exempt scientific diving when it complies with an "alternative standard" to be moot. From the abundance of evidence submitted over the past years, it should be clear that there was a highly developed standard of practice in existence. There is no shred of evidence to indicate that the SDC [scientific diving community] has been irresponsible in any way toward the health and safety of its members.

OSHA believes that the steps necessary for a scientific diving program to be exempt from Subpart T are sufficiently stringent as to render an alternative OSHA standard unnecessary. The conditions placed on scientific diving programs in the final rule will assure the continued adherence to, and the integrity of, the scientific diving community's effective consensual program. Further, OSHA believes that the final rule will provide greater flexibility for the scientific diving community in planning and executing its scientific diving research programs, while maintaining the practices and procedures that have resulted in its exemplary safety record.

After a careful evaluation of all of the information contained in the record, OSHA has concluded that the same justifications for exemption of scientific diving performed by educational institutions are also valid for exemption of all segments of the scientific diving community; that there are significant differences between scientific diving and commercial diving; that utilization of the variance mechanism would be an unnecessary burden and would not provide relief as expeditiously as the rulemaking process; that the scientific diving community has for many years been implementing the safeguards first developed by the Scripps Institution and is effectively self-regulated; and that the purpose of the Occupational Safety and Health Act will be served by the community's continued adherence to its system of self-regulation. Therefore, OSHA has determined that scientific diving programs should be exempted from Subpart T if they meet the conditions set forth in the final rule.

The commercial diving standard was originally issued after consultation with the Construction Advisory Committee under section 107 of the Construction Safety Act (40 U.S.C. 333). Because the exemption of scientific diving is not expected to affect the diving standard as applied to construction under 29 CFR 1926.605(e), this final rule is not being referred to that committee for review.

III. Regulatory Assessment

In accordance with Executive Order No. 12291 (46 FR 13193) OSHA assessed the potential economic impact of the proposal. OSHA concluded that the subject matter of the proposal was not a "major" action and did not necessitate further economic impact evaluation or the preparation of a Regulatory Analysis. The rulemaking would not have an annual effect on the economy of \$100 million or more, cause major increases in costs or prices, or have any other significant adverse effects.

The proposal was to grant an exemption from 29 CFR Part 1910, Subpart T, Commercial Diving Operations, to educational institutions performing diving for marine scientific research and development purposes. This exemption has now been broadened to include all scientific diving under the direction and control of a diving program containing specified conditions.

The overwhelming majority of comments on the proposal favored the exemption of all scientific diving and emphasized voluntary safety programs that have resulted in a significant risk reduction for divers engaged in scientific endeavors. There were no comments that took issue with OSHA's determination that the proposed exemption would not result in a major economic impact.

Information submitted to the record by representatives of institutions involved in scientific diving indicate that safety programs similar to those required for exemption from the standard for commercial diving operations are already in place. Because the exemption of scientific diving from coverage under Subpart T does not impose any additional costs and in fact eliminates costs that have placed economic burdens on the educational and scientific diving community, OSHA has determined that no additional analysis is necessary for the final regulatory assessment.

In addition, pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 et seq.)), OSHA assessed the impact of the proposed rulemaking on small entities and concluded that it would not have a significant economic impact on a substantial number of small entities. No comments submitted took issue with this determination. After a careful review of the rulemaking record, OSHA therefore certifies that this action will have no significant impacts on the total economy, on any one industry, or on small entities.

IV. List of Subjects in 29 CFR Part 1910

Occupational safety and health,
Safety.

V. Effective Date

Pursuant to 5 U.S.C. 553(d)(1), a substantive rule can be made immediately effective upon publication if it provides an exemption or relieves a regulatory burden. Therefore, OSHA is making the exemption for scientific diving effective as of today's date.

Should the issuance of this exemption be stayed, judicially or administratively, or should this exemption not sustain legal challenge under section 6(f) of the Occupational Safety and Health Act, the current standards in §§ 1910.401-1910.440 will remain in effect for scientific diving.

VI. Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Section 41 of the Longshoreman's and Harbor Workers' Compensation Act (44 Stat. 1444 as amended; 33 U.S.C. 941), Secretary of Labor's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911, Part 1910 of Title 29 of the Code of Federal Regulations, is amended as set forth below.

PART 1910—[AMENDED]

1. Section 1910.401 is amended by adding a new paragraph (a)(2)(iv) to read as follows:

§ 1910.401 Scope and application.

- (a) * * *
- (2) * * *

(iv) Defined as scientific diving and which is under the direction and control of a diving program containing at least the following elements:

(A) Diving safety manual which includes at a minimum: procedures covering all diving operations specific to the program; procedures for emergency care, including recompression and evacuation; and criteria for diver training and certification.

(B) Diving control (safety) board, with the majority of its members being active divers, which shall at a minimum have the authority to: Approve and monitor diving projects; review and revise the diving safety manual; assure compliance with the manual; certify the depths to which a diver has been trained; take disciplinary action for unsafe practices;

and, assure adherence to the buddy system (a diver is accompanied by and is in continuous contact with another diver in the water) for SCUBA diving.

2. Section 1910.402 is amended by adding a new definition, "scientific diving," between definitions for "Psi(g)" and "SCUBA diving," to read as follows:

§ 1910.402 Definitions.

"Scientific diving" means diving performed solely as a necessary part of a scientific, research, or educational activity by employees whose sole purpose for diving is to perform scientific research tasks. Scientific diving does not include performing any tasks usually associated with commercial diving such as: placing or removing heavy objects underwater; inspection of pipelines and similar objects; construction; demolition; cutting or welding; or the use of explosives.

(Sec. 6, 8, 84 Stat. 1593, 1598 (29 U.S.C. 655, 657); Sec. 41, 44 Stat. 1444 (33 U.S.C. 941); 29 CFR Part 1911, Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C. this 19th day of November, 1982.

Thorne G. Auchter,
Assistant Secretary of Labor.

[FR Doc. 82-32335 Filed 11-24-82; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 211****Coal Exploration and Mining Operations**

AGENCY: Minerals Management Service, Interior.

ACTION: Corrections to final rule.

SUMMARY: This document corrects clerical/typographical errors and minor omissions in the July 30, 1982, final rulemaking for 30 CFR Part 211, Coal Exploration and Mining Operations (47 FR 33154). These corrections are being made to clarify portions of the rule that appear to be ambiguous.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas V. Leshendok, (703) 860-7506, (FTS) 928-7506, or Mr. Harold W. Moritz, (703) 860-7136, (FTS) 928-7136.

SUPPLEMENTARY INFORMATION: In the July 30, 1982, *Federal Register*, the Minerals Management Service (MMS) published final rulemaking for 30 CFR Part 211, Coal Exploration and Mining

Operations. Review by the principal authors of that rulemaking has revealed potential ambiguities due to clerical/typographical errors and minor omissions of phrases. This correction to that final rulemaking is intended to remove the potential ambiguities.

In addition, one comment received on the December 16, 1981, proposed rulemaking for 30 CFR Part 211 (46 FR 61424) requested that "soil samples (taken) for reclamation purposes" should be included in the definition of exploration. In the preamble to the July 30, 1982, final rulemaking for 30 CFR Part 211 (47 FR 33158), MMS concurred with the comment and added the word "soil" to the definition of "exploration" (47 FR 33181). Further review of this addition has revealed that the inclusion of the word "soil" could be misconstrued to mean that an exploration plan would have to be approved by MMS if *only* soil sampling were to be conducted. This was not the intent of MMS when it concurred with the comment.

The MMS has determined that soil sampling in and of itself does not constitute exploration. Therefore, the word "soil" has been deleted from the definition of "exploration."

The corrections to the final rulemaking document are as follows:

General Correction

1. Throughout the entire "SUPPLEMENTARY INFORMATION:", "43 CFR Part 3400" is corrected to read "43 CFR Group 3400"; "30 CFR 211" is corrected to read "30 CFR Part 211"; and, "10 CFR 378" is corrected to read "10 CFR Part 378".

Specific Corrections—Preamble

2. On page 33154, line 10 of the "SUMMARY" in the first column is corrected to read "continued operation, advance royalty".

3. On page 33154, line 16 of the second paragraph of "Responsibilities under MLA" in the second column is corrected to read "requirements of FCLAA for exploration".

4. On page 33154, the last line of the paragraph entitled "Relation to OSM's Federal Lands Program" in the third column is corrected to read "involve Federal coal."

5. On page 33154, the first paragraph under "General Comments" in the third column is corrected by adding "until the first lease readjustment after August 4, 1976." to the end of the last sentence.

6. On page 33155, columns 2 and 3 of the chart in column 3 are corrected by inserting a new line following the line that reads "Commercial Quantities"

with a line that reads:

"211.2(a)(6) |
211.2(a)(8)."; by inserting "211.2(a)(7)" in column 2 on the same line as "Continued Operation Year" in column 1; by inserting a new line following the line that reads "211.2(a)(17) | 211.2(a)(21)." with a line that reads "211.2(a)(18) | 211.2(a)(22)."; and, by inserting "211.2(a)(19)" in column 2 on the same line as "211.2(a)(23)." in column 3.

7. On page 33155, column 3 of the chart in column 3: "211.2(a)(4)." is corrected to read "211.2(a)(6)."; "211.2(a)(5)." is corrected to read "211.2(a)(7)."; "211.2(a)(7)." is corrected to read "211.2(a)(9)."; "211.2(a)(8)." is corrected to read "211.2(a)(10)."; and, "211.2(a)(9)." is corrected to read "211.2(a)(11).".

8. On page 33155, in column 3 of the chart in column 3 "211.2(a)(26)." is corrected to read "211.2(a)(27)."; "211.2(a)(27)." is corrected to read "211.2(a)(26)."; and the two lines are resequenced accordingly.

9. On page 33156, in line 31 in column 1 of the chart in column 1, ".306(b)" is corrected to read ".309(b)".

10. On page 33156, the heading in column 2 is corrected to read "30 CFR 211.2(a)(6) * * *".

11. On page 33156, lines 8 and 16 in column 3 are corrected to read, respectively, "211.2(a)(6)(ii). The depth criterion" and "CFR 211.2(a)(6)(iv) adequately addresses".

12. On page 33156, the heading in column 3 is corrected to read "30 CFR 211.2(a)(6), (26), and (37) * * *".

13. On page 33156, line 8 under "30 CFR 211.2(a) * * *" in column 3 is corrected to read "211.2(a)(6), and assuming an average".

14. On page 33157, the heading in column 1 is corrected to read "30 CFR 211.2(a)(7), (9), (13), and (14) * * *".

15. On page 33157, line 30 in column 3 is corrected to read "operators/lessees under an approved permit and an approved resource recovery and protection plan. It should be noted".

16. On page 33158, line 2 of paragraph "(2)" in the first column is corrected to read "which do not contain an unreadjusted".

17. On page 33158, the heading in column 1 is corrected to read "30 CFR 211.2(a)(8) * * *".

18. On page 33158, line 50 in column 3 is corrected to read "definition be left as proposed because,".

19. On page 33159, line 12 of the second column is corrected to read "original Federal lease diligence" and line 24 of the second column is corrected

to read "determination and are one factor considered".

20. On page 33159, the heading in column 3 is corrected to read "30 CFR 211.2(a)(23) and (37) * * *".

21. On page 33160, line 23 of the second column is corrected to read "1265(b)(1)). The MMS will not force an".

22. On page 33160, the headings in the second column are revised to read "30 CFR 211.2(a)(27)" and "30 CFR 211.2(a)(26)" and the paragraphs are resequenced.

23. On page 33160, line 17 under "30 CFR 211.2(a)(27) Minable Reserve Base" in the second column is corrected to read "reserve base. By the same reasoning".

24. On page 33160, the first heading in column 3 is corrected to read "30 CFR 211.2(a)(31) * * *".

25. On page 33160, the second heading in column 3 is corrected to read "30 CFR 211.2(a)(34) * * *".

26. On page 33160, the third heading in column 3 is corrected to read "30 CFR 211.2(a)(39) * * *".

27. On page 33161, the first heading in column 1 is corrected to read "30 CFR 211.2(a)(42) * * *".

28. On page 33162, line 5 under § 211.3(c)(11) in column 2 is corrected to read "received on 30 CFR 211.3(c) and (d)." *

29. On page 33165, line 2 under "30 CFR 211.10(a)(3)(x)" in the second column is corrected to read "of this paragraph as being 'open-ended.'" *

30. On page 33166, line 13 of the last full paragraph in the first column is corrected to read "in the SMCRA permit applications. These".

31. On page 33169, line 14 after the example under "30 CFR 211.11(a)(3)" in column 1 is corrected to read "1.12 million tons. It should be noted that on the effective date of the operator/lessee election, since 12 million tons were applied toward diligence, the diligent development requirement of 1.12 million tons had been satisfied and the operation was automatically subject to the condition of continued operation. Upon acquisition of".

32. On page 33169, line 11 of the second full paragraph under "30 CFR 211.11(b)(2)" in the second column is corrected to read "concerns. If there are disagreements."

33. On page 33171, lines 6 through 8 of the second full paragraph in column 1 are corrected to read "211.21(c) has been revised accordingly and continued operation has been removed from 30 CFR 211.21(d). One".

34. On page 33172, line 14 in the first column is corrected to read "one comment stated that suspensions".

35. On page 33177, line 7 under "30 CFR 211.80(c)(5)" in the third column is corrected to read "information may be required. The additional".

Specific Corrections—Regulatory Text

36. On page 33179, line 4 under "Authority" in the third column is corrected to read "Lands of 1947, as amended (30 U.S.C. 351-359); the".

37. On page 33179, line 13 under "Authority" in the third column is corrected to read "396g); the Act of February 28, 1891, as".

38. On page 33180, line 9 under § 211.2(a)(1) in the second column is corrected to read "prior to August 4, 1976, and not readjusted after".

39. On page 33181, line 8 under definition "(17) Exploration" is corrected to read "coal, overburden, and strata above".

40. On page 33181, definitions "(26)" and "(27)" in the second column are redesignated as "(27)" and "(26)", respectively, in order to be in numerical order.

41. On page 33181, line 6 of definition "[38]" in the third column is corrected to read "degradation of coal-bearing or mineral".

42. On page 33183, line 2 of § 211.4(f) in the third column is corrected to read "the District Mining Supervisor and the".

43. On page 33184, line 3 of § 211.6(a)(4) in column 1 is corrected to read "recoverable coal reserves figure".

44. On page 33185, lines 45 and 46 of the first full paragraph under § 211.10(b) in the first column are corrected to read "approved as of August 30, 1982, shall be revised to comply".

45. On page 33186, the title of § 211.11(a)(3) in column 2 is corrected to read "Recoverable coal reserves estimates."

46. On page 33187, lines 4 through 6 of § 211.20(b)(1) in the second column are corrected to read "Mining Supervisor in writing prior to August 30, 1983."

47. On page 33188, line 3 in the first column is corrected to read "pursuant to 30 CFR 211.22(b), direct".

48. On page 33188, lines 3 and 4 of § 211.22(b)(3) in the first column are corrected to read "of suspension, in accordance with 30 CFR 211.22(b), of operations and".

49. On page 33188, line 16 of § 211.23(c) in the second column is corrected to read "underground mining operations and 12½".

50. On page 33189, line 3 under § 211.40(b)(1) in the third column is corrected to read "Federal lease issued or readjusted".

51. On page 33193, line 3 of § 211.70(b) in the first column is corrected to read "District Mining Supervisor and the".

52. On page 33193, line 7 of § 211.72(c) in the third column is corrected to read "approved exploration or resource".

53. On page 33195, lines 4 through 6 of § 211.102(a) in the second column are corrected to read "to these rules will result in the collection by MMS of the full amount past".

54. On page 33195, line 13 of § 211.102(a) in the second column is corrected to read "provided by MMS to the operator/lessee."

55. On page 33195, lines 7 and 8 of § 211.102(e) in the third column are corrected to read "payments, fees, or assessments that an operator/lessee is required to pay".

Dated: November 13, 1982

Jim Watt

Secretary, Department of the Interior.

[FR Doc. 82-32256 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD8-82-02]

Anchorage Regulations; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has amended the anchorage regulations on the Lower Mississippi River by shifting the Cedar Grove Anchorage approximately 3,000 feet downriver. This action was necessary because of a planned midstream loading facility in the present anchorage.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: LCDR R. E. Ford, Port Safety Officer, Captain of the Port, New Orleans, LA, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117, Tel: (504) 589-7118.

SUPPLEMENTARY INFORMATION: On July 22, 1982, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register for this regulation (47 FR 31711). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are LT M. W. Brown, Project Officer, c/o Commander, Eighth Coast Guard District (mps) and LT J. C. Helfrich,

Project Attorney, c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130.

Economic Assessment and Certification

These proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation of the proposal was not conducted since its impact is expected to be minimal. As an existing anchorage is merely being shifted, no new costs will be imposed. It is also certified that in accordance with section 605(b) of the Regulatory Flexibility Act, these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended by adding § 110.195(a)(8) to read as follows:

§ 110.195 **Mississippi River below Baton Rouge, LA, including South and Southwest Passes.**

(a) * * *

(8) *Cedar Grove Anchorage.* An area 0.7 mile in length along the right descending bank of the river, 700 feet wide as measured 400 feet from the Low Water Reference Plane of the right descending bank extending from mile 69.9 to mile 70.6 above Head of Passes.

* * * * *

(33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46(c)(1); 33 CFR 1.05-1(g))

Dated: October 26, 1982.

W. H. Stewart,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 82-32466 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD 80-069]

Regulated Navigation Area; New Haven Harbor, Vicinity of Tomlinson Bridge

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule establishing the Regulated

Navigation Area (RNA) in New Haven Harbor in the vicinity of Tomlinson Bridge. When RNA New Haven harbor was published as a final rule, the paragraph citing the period during which vessel transit through the Tomlinson Bridge is prohibited was incorrect. This amendment corrects the error in the final rule by changing the time during which vessel transit through the Tomlinson Bridge is prohibited.

EFFECTIVE DATE: This rule becomes effective on November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Ensign R. B. Strobbridge, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-4958.

Drafting Information: The principal persons involved in drafting this rule are Ensign R. B. Strobbridge, Project Manager and Lieutenant Walter Brudzinski, Project Attorney, Office of Chief Counsel.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking (NPRM) has been omitted for good cause. This document corrects an inadvertent error in the final rule which established the Regulated Navigation Area in New Haven Harbor. A local Order currently in effect, issued by Captain of the Port New Haven, temporarily nullifies the effect of the published error. Since the Captain of the Port Order is of a temporary nature only, this rule is effective immediately.

Discussion

The final rule published on November 16, 1981 (46 FR 56181) established a Regulated Navigation Area in New Haven Harbor. The purpose of the RNA is to provide a stricter control of vessel movement in the area. It was established specifically to prevent damage to the Tomlinson Bridge and to protect vessels and the navigable waters from harm resulting from collisions with that structure. The RNA provides a permanent solution to a historically dangerous condition which has been dealt with previously on a temporary basis. The regulation is aimed at barges with a freeboard greater than ten feet (hereafter referred to as regulated barges), and any vessel towing or pushing these barges on outbound transit of the Tomlinson Bridge.

A significant factor in past collisions of barges with the bridge is the presence of a strong ebb current in the vicinity of Tomlinson Bridge. The intent of the Regulated Navigation Area was to prohibit the outbound transit of regulated barges during the period of time when the ebb current was at its

maximum force. This period of maximum force was determined to be from two hours before to two hours after maximum ebb current. Comments received in response to the NPRM suggested that this period of maximum force could be more easily determined by towboat operators if referenced to high water slack time. The Coast Guard concurred with the proposal to reference high water slack when determining the period of maximum current.

However, in the wording of the final rule, the time during which outbound transit is permitted was stated incorrectly as being "from three hours before and after high water slack". If a tow transits through the bridge during the last two hours of this period, it would actually be transiting when the ebb current was at its maximum velocity. This rule amends the regulation by changing the language in the rule to reflect that the outbound transit of these barges is prohibited during the period "from one hour to five hours after high water slack".

Regulated Navigation Areas were formerly located in Part 128 of Title 33, Code of Federal Regulations. These regulations have been recodified and published as a new Part 165 entitled "Regulated Navigation Areas and Limited Access Areas"; (CGD 79-034, July 8, 1982, 47 FR 29659). Old § 128.303(b)(3)(i) now appears as § 165.304(b)(3)(i).

Regulatory Evaluation

This amendment has been reviewed under the provisions of Executive Order 12291 and under DOT Order 2100.5, dated May 5, 1980, and has been determined to be non-major and non-significant. This document corrects an inadvertent error in the final rule establishing the Regulated Navigation Area in New Haven Harbor. No additional requirements will be imposed on the public as a result of this rulemaking.

In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule will not have a significant economic impact on a substantial number of small entities. This document merely corrects an error in the regulation and will impose no additional requirement on the public.

List of Subjects in 33 CFR Part 165

Navigation (water), Waterways, Barges, Harbors, Security measures, Vessels, Marine safety.

PART 165—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is corrected by revising § 165.304(b)(3)(i) to read as follows:

§ 165.304 New Haven Harbor, Quinnipiac River, Mill River.

* * * * *

(b) * * *

(3) * * *

(i) During the period from one hour to five hours after high water slack,

* * * * *

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: November 15, 1982.

B. F. Hollingsworth,

Rear Admiral, Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 82-32464 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 18

Leases and Exchanges of Historic Property

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: These rules prescribe the procedures to be used in offering National Park Service historic property for lease and for requests for proposals for negotiated leases. These rules also implement the authority for exchanges of federally owned property for non-federally owned historic property within authorized boundaries of existing units of the National Park System. The purpose of any lease or exchange under these regulations is to ensure the preservation of the historic property involved.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

Charles C. Haslet, Land Resources Division, National Park Service, Washington, D.C. 20240, (202) 523-5172; Sally Blumenthal, Preservation Assistance Division, National Park Service, Washington, D.C. 20240 (202) 272-3761.

SUPPLEMENTARY INFORMATION:

The principal authors of this final rule were Charles C. Haslet of the Land Resources Division and Sally Blumenthal of the Preservation Assistance Division of the National Park Service. Since this is a procedural rule and was preceded by an opportunity for public comment which did not result in significant modification

of the proposed rule, this final rule is effective upon publication in the *Federal Register*.

The proposed rulemaking was published on pages 17829-17833 of the *Federal Register* of April 26, 1982, and invited comments for 30 days ending May 26, 1982. Comments were received from 8 sources including individuals, business, government officials, a preservation organization, and the Public Lands and National Parks Subcommittee of the Interior and Insular Affairs Committee of the U.S. House of Representatives. The following summarizes the comments and the action taken as a result of the comments.

Authority

Section 207 of the National Historic Preservation Act Amendments of December 12, 1980, includes authority which permits federal agencies to enter into management contracts for the preservation of historic property. It was not deemed necessary to implement that authority as a part of this rulemaking since the Federal Procurement Regulations in combination with the statutory authority would be used by the National Park Service for any management contracts for preservation of historic properties.

Definitions

A number of comments suggested that the definition of "rehabilitation" be included because lessees of National Park Service historic property might also be eligible for historic preservation tax incentives pursuant to the Economic Recovery Tax Act of 1981 and 36 CFR Part 67. That definition has been added.

Historic Objects

There was some suggestion that leasing historic objects under this authority might provide for greater enjoyment of them by the public. Since these regulations are intended to be procedures governing the leasing of real property and since there are other existing mechanisms for making objects (personal property) owned by the National Park Service available, historic objects have been excluded from applicability under these regulations. However, there may be instances when certain kinds of objects which are integrally related to a structure, such as machinery or fixtures, would be included as part of the historic property to be leased.

Advertised Sealed Bids

A comment suggested that all lease offerings should be subject to requests

for proposals and that none should be based solely on price. While in every lease offering there will be preservation conditions under the lease, many types of single-use property which the National Park Service will be leasing under these regulations will not be appropriate for criteria other than price. For instance, in leasing historic or archeological sites for farming or grazing, the bid price will be the determining factor in awarding a lease. Another example is a lease of a residence for residential use without requirements for the tenant to perform work on the structure.

Exchanges

It was suggested that additional protections be included in the regulations to ensure that any exchanges pursuant to these regulations would not result in unacceptable losses to the integrity of the National Park System. We consider that the requirement in § 18.3 that leases or exchanges must be consistent with the purposes for which the park was established satisfies this concern.

It was also suggested that the requirement that exchanges should be for properties of "approximately equal fair market value" is too restrictive, particularly in circumstances where mineral rights might be involved. The language provided in § 18.13(b) is consistent with other Federal regulations governing exchanges and thus serves to protect against possible abuses. Insofar as valuations of mineral interests are concerned, these can be addressed within the appraisal process.

Editorial and Drafting Changes

A number of editorial suggestions were implemented to clarify sections of this rulemaking involving the relationship of the National Park Service to prospective bidders and lessees in order to ensure that the public received the best possible information about the historic property being leased and mutual obligations under a lease.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In implementing this rule, the National Park Service is seeking not only the positive qualitative effect of preservation of cultural resources, but also the positive economic effect of doing so without a major overriding investment of Federal

funds. Even with the ability to lease historic property to ensure its preservation, the National Park Service estimates that it will only be able to lease about 40-60 properties annually. Therefore, this rule will have considerably less than a \$100 million gross annual impact on the economy and will not require major budget or personnel changes in Federal, state, or local governments. It is anticipated that this rule will have a positive effect on employment and investment. Restoration of existing structures is a labor-intensive enterprise (estimated as high as 75% labor-intensive) and the availability of historic property for lease by the National Park Service is expected to encourage investment by the private sector. Additionally, if that historic property is located in an urban area, it is likely that the restoration of Government-owned historic property will result in attracting other investment in nearby or adjacent property. If it is assumed that only 40-60 historic properties will be available annually, a substantial number of small entities will not be effected. However, to the extent that historic property made available under this rule might be small houses, farmsteads, or commercial structures, the small entities which are impacted will be affected positively in the form of housing or business opportunities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Environmental Impact Statement

This rulemaking prescribes administrative procedures for implementing Section 207 of the National Preservation Act Amendments of December 12, 1980, Pub. L. 96-515, 94 Stat. 2997. Such procedures have no potential for significant environmental impact and are categorically excluded from the requirement for compliance with the National Environmental Policy Act. Therefore, it is hereby determined that this rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects in 36 CFR Part 18

Historic properties, National parks.

For the reasons set out in the preamble, Chapter I of Title 36 of the

Code of Federal Regulations is amended as set forth below.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

Part 18 is added to 36 CFR Chapter I to read as follows:

PART 18—LEASES AND EXCHANGES OF HISTORIC PROPERTY

Sec.

- 18.1 Authority.
- 18.2 Definitions.
- 18.3 Applicability.
- 18.4 Notice/Publicity.
- 18.5 Determination of fair market rental value.
- 18.6 Advertised sealed bids.
- 18.7 Action at close of bidding.
- 18.8 Requests for proposals.
- 18.9 Lease terms and conditions.
- 18.10 Subleases and assignments.
- 18.11 Special requirements.
- 18.12 Ownership of improvements.
- 18.13 Exchanges for historic property.

Authority: Sec. 207, Pub. L. 96-515, 94 Stat. 2997 (16 U.S.C. 470h-3)

§ 18.1 Authority.

Section 207 of the National Historic Preservation Act Amendments of December 12, 1980, Pub. L. 96-515, 94 Stat. 2997, amends the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, by adding a new Section 111. Section 111(a) authorizes the Secretary of the Interior to lease historic property owned by the Department of the Interior or to exchange certain property owned by the Department of the Interior with certain comparable non-federally owned historic property in order to ensure the preservation of the historic property. Section 111(b) provides that proceeds from such leases of an historic property may be retained by the agency to defray the cost of administering, maintaining, repairing, or otherwise preserving the property or other properties on the National Register. The Secretary must consult with the Advisory Council on Historic Preservation before taking an action pursuant to this part.

§ 18.2 Definitions.

In addition to applicable definitions contained in 36 CFR Part 1, the following definitions shall apply to this part:

(a) "Adaptive Use" means the act or process of adapting a structure to a use other than that for which it was designed.

(b) "Authorized Officer" means an officer or employee of the National Park Service designated to conduct leases or exchanges and delegated authority to execute all necessary documents including leases and deeds.

(c) "Director" means Director of the National Park Service or his delegated representative.

(d) "Fair Market Rental Value" means the most probable rent that the property would command if it were exposed on the open market for a period of time sufficient to attract a tenant who rents the property with full knowledge of the alternatives available to him on the market.

(e) "Fair Market Value" means the amount in cash, or terms reasonably equivalent to cash, for which in all probability, the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but was not obligated to buy.

(f) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places.

(g) "Lease" means a written contract by which use and possession in land and/or improvements is given to another person for a specified period of time and for rent and/or other consideration.

(h) "Leasehold interest" means a contract right in property consisting of the right to use and occupy real property by virtue of a lease agreement.

(i) "National Register" or "National Register of Historic Places" means the national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior under authority of section 101(a)(1) of the National Historic Preservation Act of 1966, as amended (80 Stat. 915, 16 U.S.C. 470 et seq. (1970 ed)).

(j) "Preservation" means the act or process of applying measures to sustain the existing terrain and vegetative cover of a site and the existing form, integrity, and material of a structure. It includes initial stabilization work, where necessary, as well as ongoing maintenance.

(k) "Preservation Maintenance" means the act or process of applying preservation treatment to a site or structure. It includes housekeeping and routine and cyclic work scheduled to mitigate wear and deterioration without altering the appearance of the resource, repair or replacement-in-kind of broken or worn-out elements, parts, or surfaces so as to keep the existing appearance and function of the site of structure, and emergency stabilization work necessary to protect damaged historic fabric from additional damage.

(l) "Reconstruction" means the act or process of accurately reproducing a site or structure, in whole, or in part, as it appeared at a particular period of time.

(m) "Rehabilitation" means the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural, and cultural values.

(n) "Restoration" means the act or process of recovering the general historic appearance of a site or the form and details of a structure, or portion thereof, by the removal of incompatible natural or human-caused accretions and the replacement of missing elements as appropriate. For structures, restoration may be for exteriors and interiors, and may be partial or complete.

§ 18.3 Applicability.

Section 111 of the Act is applicable to certain historic property under the jurisdiction of the National Park Service which the Director has determined would be adequately preserved by lease as well as to any other non-federal historic property within the authorized boundaries of a unit of the National Park System which the National Park Service may wish to acquire through an exchange of federally owned property of equal value and/or equalizing monetary consideration, in order to ensure the preservation of the historic property. No lease or exchange shall be made under this part until a written determination is made by the Director that, pursuant to the National Park Service Planning Process, such use will be consistent with the purposes for which the park is established. No lease or exchange shall be made prior to consultation with the Advisory Council on Historic Preservation. These regulations shall not apply to objects or prehistoric structures.

§ 18.4 Notice/Publicity.

(a) When the Director has determined in accordance with these regulations that an appropriate interest in National Park Service property will be offered for lease, public notice of the opportunity shall be published at least twice in local and/or national newspapers of general circulation, appropriate trade publications, and distributed to interested persons. The notice shall be published not less than 60 days prior to the date of the bid opening or receipt of proposals and may be cancelled or withdrawn at any time. The notice shall contain, at a minimum: (1) A legal description of the property by public

lands subdivision, metes-and-bounds, lot or by other suitable method, (2) a statement of the interest and term to be made available, designation of permissible uses, if applicable, including restrictions to be placed on the property, (3) whether the opportunity is for submission of a bid or a proposal as a result of a request for proposals, (4) when appropriate, a statement of the minimum acceptable bid below which the interest will not be conveyed, (5) an outline of bid or proposal procedures and a designation of the time and place for submitting bids or proposals, (6) an outline of lease procedures, requirements, and time schedule, (7) information regarding the character of the property and its location as deemed necessary, and (8) information on the physical condition of the property and where appropriate, work which may be required.

(b) All persons interested in an offering of property for lease shall be permitted and/or encouraged to make a complete inspection of such property including any available records, plans, specifications, or other such documents.

(c) Where a historic property has been designated for lease pursuant to this part, a condensed statement of the availability of property for lease shall be prepared and submitted for inclusion in the U.S. Department of Commerce publication "Commerce Business Daily" to: U.S. Department of Commerce (S-Synopsis), Room 1304, 433 West Van Buren Street, Chicago, Illinois 60607.

§ 18.5 Determination of fair market rental value.

Fair market rental value of a property offered for lease will be prepared and reviewed by qualified professional real estate appraisers. Estimated fair market rental value will be prepared in accordance with professional standards and practices, taking into consideration all factors influencing value including special or unique provisions and/or limitations on the use of the property contained in the lease.

§ 18.6 Advertised sealed bids.

Leases will be offered through advertised sealed bids when the lease price is the only criterion for award. If a property is to be leased on a bid basis, and the advertisement/solicitation specifies a bid form, it will be made available upon request. Bids may be made by a principal or designated agent, either personally or by mail. Bids will be considered only if received at the place designated and prior to the hour fixed in the offering. If no bid form is specified, bids must be in writing, clearly identify

the bidder, be signed by the bidder or designated agent, state the amount of the bid, and refer to the public notice. Bids conditioned substantially in ways not provided for by the notice will not be considered. Bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the United States of America for the amount specified in the advertisement. The bid and payment must be enclosed in a sealed envelope upon which the prospective bidder shall write "Bid on interest in property of the National Park Service" and shall note the scheduled date the bids are to be opened. Payments will be refunded promptly to unsuccessful bidders. Bids will be opened publicly at the time and place specified in the notice of the offering. Bidders, their agents or representatives, and any other interested person may attend the bid opening. No bid in an amount less than the fair market rental value shall be considered. In the event two or more valid bids are received in the same amount, the award shall be made by a drawing by lot limited to the equal acceptable bids received.

§ 18.7 Action at close of bidding.

When a property is advertised for sealed bids, the bidder who is declared by the authorized officer to be the high bidder shall be bound by his bid and the regulations in this part to execute the lease, in accordance therewith, unless the bid is rejected. The Director reserves the right to reject any and all bids in his discretion when in the best interest of the Government.

§ 18.8 Requests for proposals.

(a) When the award of a lease will be based on criteria in addition to price, solicitation of offers will be made through requests for proposals and the Director may negotiate with the party or parties which, in the Director's judgment, makes the offer(s) which is susceptible to being the most advantageous to the National Park Service.

(b) Where significant investment would be required of a potential lessee, the Director shall issue a request for proposals describing the required preservation, preservation maintenance, restoration, reconstruction, adaptive use, or other specified work.

(c) Requests for proposals will be made available upon request to all interested parties and will allow a minimum of sixty days for proposals to be submitted unless a shorter period is necessary and made part of the public notice.

(d) All proposals received will be evaluated by the Director, and the proposal(s) considered to meet the criteria best shall be selected as the basis for negotiation to a final lease.

(e) The principal factors to be used in evaluating the proposal(s) shall be stated in the request for proposals and shall include as appropriate (1) price, (2) financial capability, (3) experience of the proposer, (4) conformance of the proposal(s) to the request for proposals, (5) impact of the proposal(s) on the historical significance and integrity of the site or structure(s) or, (6) any other factors that may be specified. When the request for proposal solicits lease proposals for use of sites or structures, the selection criteria may include assessment of the degree to which any use proposed is supportive of the purposes of the park.

(f) The Director may solicit from any offeror additional information, or written or verbal clarification of a proposal. The Director may choose to reject all proposals received at any time and resolicit or cancel the solicitation altogether in his discretion when in the best interest of the Government. Any material information made available to any offeror by the Director must be made available to all offerors, and will be available to the public upon request.

(g) The Director may, in his discretion, terminate negotiations at any time prior to execution of the lease without liability to any party when it is in the best interest of the Government.

§ 18.9 Lease terms and conditions.

(a) All leases shall contain such terms and conditions as the Director deems necessary to assure use of the property in a manner consistent with the purpose for which the area was authorized by Congress and to assure the preservation of the historic property.

(b) Leases granted or approved under this part shall be for the minimum term commensurate with the purpose of the lease that will allow the highest economic return to the Government consistent with prudent management and preservation practices, except as otherwise provided in this part. In no event shall a lease exceed a term of 99 years.

§ 18.10 Subleases and assignments.

(a) A sublease, assignment, amendment or encumbrance of any lease issued under this part may be made only with the written approval of the Director.

(b) A lease may be amended from time to time at the written request of either the lessee or the Government with written concurrence of the other party.

Such amendments will be added to and become a part of the original lease.

(c) The lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, with approval of the Director, provided the uses prescribed in the original lease are not violated. Subleases so made shall not serve to relieve the sublessee from any liability nor diminish any supervisory authority of the Director provided for under the approved lease.

(d) With the consent of the Director, the lease may contain provisions authorizing the lessee to encumber the leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument must be approved by the Director in writing. An assignment or sale of leasehold under an approved encumbrance can be made with the approval of the Director and the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. Such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

§ 18.11 Special requirements.

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Director and subject to his written approval.

(b) No lease shall be approved or granted for less than the present fair market rental value.

(c) Unless otherwise provided by the Director a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental or portion thereof shall be paid in advance.

(2) The estimated construction cost of any improvements by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee will be required to secure and maintain from responsible companies insurance sufficient to indemnify losses connected with or occasioned by the use, activities, and operations authorized by the lease. Types and amounts of insurance coverage will be specified in writing and periodically reviewed by the National Park Service.

(e) The lessee shall save, hold harmless, and indemnify the United States of America, its agents and employees for losses, damages, or judgments and expenses on account of personal injury, death or property damage or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the activities of the lessee, his employees, subcontractors, sublessees, or agents under the lease.

(f) No lease shall provide the lessee a preference right of future leases.

(g) The lessee is responsible for any taxes and assessments imposed by Federal, State, and local agencies on lessee-owned property and interests.

(h) The lessee shall comply with local applicable ordinances, codes, and zoning requirements.

§ 18.12 Ownership of Improvements.

(a) Capital improvements made to existing government-owned structures by the lessee or additional structures placed on the government-owned land by the lessee are the property of the United States. No rights for compensation of any nature exist for such property at the termination or expiration of the lease except as specified in the lease.

(b) Furniture, trade fixtures, chattel, and other personal property defined in the lease shall remain the property of the lessee upon termination or expiration of the lease and shall be removed within a reasonable time specified in the lease.

§ 18.13 Exchanges for historic property.

(a) After consultation with the Advisory Council on Historic Preservation, the Secretary, consistent with other legal requirements or other legal authorities, may exchange any property owned by the United States of America under his administration for any non-federally owned historic property located within the authorized boundaries of an existing unit of the National Park System, if he has determined that such exchange will adequately ensure preservation of the historic property and subject to the requirements of § 18.3 hereof.

(b) The exchange of the two properties must be on the basis of approximately equal fair market value established by the approved appraisal reports of the agency. The Secretary may accept cash from or pay cash to the grantor in an exchange, in order to equalize the values of the properties exchanged.

(c) Title to the non-Federal property to be received in exchange must be free and clear of encumbrances and/or liens.

(d) Prior to consummation of any exchange, the Secretary shall evaluate the Federal land to be exchanged, and shall reserve such interests as necessary to protect the purposes for which the unit of the National Park System was established. The grantor of property to the Federal Government may reserve only such rights as are compatible with the purposes for which it is being acquired as determined by the Secretary. Appraisal of fair market values must reflect any reservations or restrictions.

[FR Doc. 82-31911 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 120

[WH-FRL-2242-3]

Water Quality Standards; State of Alabama; Withdrawal of Regulation

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of a rule.

SUMMARY: EPA is withdrawing a rule that established beneficial uses for

sixteen stream segments that superseded those established on December 19, 1977, in the State of Alabama Water Quality Standards. EPA believes the 1981 and 1982 revisions to the Alabama Water Quality Standards obviate the need for the Federal rule.

DATE: This withdrawal is effective December 27, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. Jim Kutzman, Water Quality Standards Coordinator, EPA Region IV, 345 Courtland Street, Atlanta, GA 30365, (404) 881-3116.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1980, the Environmental Protection Agency (EPA) promulgated a rule establishing beneficial use designations for sixteen stream segments in the State of Alabama (45 FR 9910, codified at 40 CFR 120.11, erroneously listed in the 1981 and 1982 editions of 40 CFR as 120.10). These beneficial use designations superseded the use designations adopted by the Alabama Water Improvement Commission, which had previously been disapproved by EPA pursuant to section 303(c) of the Clean Water Act.

The uses and segments covered by EPA's 1980 promulgation are:

Basin	Stream	From	To	Classification
Coosa	Snow Creek	Choccolocco	Its source	Fish and Wildlife.
Lower Tombigbee	Sycamore Creek	Chickasaw Bogue	Do	Do.
Tallapoosa	Christian Creek	Oaktasasi Creek	Do	Do.
	Dobbs Creek	Do	Do	Do.
	Parkerson Mill Creek	Chewacla Creek	Do	Do.
Tennessee	Mud Creek	Cedar Creek	Town Branch	Do.
	Pond Creek	Tennessee River	Its source	Agric. and Ind. Water Supply.
Tallapoosa	Calebee Creek	Highway 80	Do	Fish and Wildlife.
Tennessee	Piney Creek	County road vicinity of Wooley Springs.	Do	Do.
Warrior	Mill Creek	Chitwood Creek	Do	Do.
	Indian Creek	Lost Creek	Do	Do.
Choctawhatchee	Beaver Creek	Newton Creek	Do	Do.
Coosa	Walnut Creek	Hog Creek	Do	Do.
Lower Tombigbee	Bassetts Creek	Orphan's Creek	Do	Do.
	Wahalak Creek	Tishlarka Creek	Do	Do.
Perdido Escambia	Indian Creek	County road crossing near Horn Hill.	Do	Do.

On February 4, 1981, and April 5, 1982, the Alabama Water Improvement Commission adopted revisions to State water quality standards. These revised State water quality standards designate beneficial uses for the sixteen stream segments in question identical to the uses designated by EPA in its February 14, 1980, promulgation. (See Alabama Water Quality Criteria and Use Classifications—Title II; also available in the Bureau of National Affairs—*Environment Reports*.) The Regional Administrator, EPA Region IV, approved Alabama's revised water quality standards on May 23, 1981 and June 4,

1982, in accordance with section 303(c) of the Clean Water Act.

Statement of Basis and Purpose

EPA's 1980 promulgation is now duplicative of an EPA-approved State water quality standard, and is no longer needed to meet the requirements of the Clean Water Act. As the Act contemplates Federal promulgation of water quality standards only where a State fails to adopt standards which meet the requirements of the Act, it is EPA's policy to withdraw promulgation water quality standards when the State adopts new or revised standards which

meet the requirements of the Act. Accordingly, because EPA's 1980 promulgation for Alabama is no longer necessary to meet the requirements of the Act, the 1980 promulgation which established Federal use designations for sixteen Alabama stream segments is withdrawn.

Availability of Record

The administrative record for the consideration of Alabama's revised Water Quality Standards is available for public inspection and copying at the Environmental Protection Agency, Region IV Office, Water Management Division, 345 Courtland Street, Atlanta, Georgia 30365, during normal weekday business hours of 8:00 am to 4:30 pm. The approved Alabama Water Quality Standards are available for inspection and copying from the Criteria and Standards Division (WH-585), 401 M Street, SW., Washington, D.C. 20460, in Room 2818 of the Mall.

Regulatory Analysis

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

This regulation imposes no new regulatory requirements but merely withdraws a Federal regulation that now duplicates a State regulation. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure

Because Alabama has adopted, and EPA has approved, beneficial use designations identical to those in the Federal promulgation, withdrawal of the Federal promulgation will have no effect on water quality or on the regulated public. Alabama complied with the public participation requirements of the Act during its review revision of its water quality standards. Therefore, EPA has determined that notice of proposed rulemaking and public procedure thereon is unnecessary for this action to withdraw 40 CFR 120.10.

(Sec. 303(c) (33 U.S.C. 1313(c)) of the Clean Water Act (Pub. L. 92-500, as amended (33 U.S.C. 1251, *et seq.*))

Dated: November 19, 1982.

Anne M. Gorsuch,
Administrator.

PART 120—WATER QUALITY STANDARDS

§ 120.10 [Removed and Reserved]

Section 120.10 of Part 120 of Chapter I, Title 40 of the Code of Federal Regulations is removed and reserved.

[FR Doc. 82-32189 Filed 11-24-82; 8:45 am]

Billing Code 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. A-22]

Use of Contract Airline Service Between Selected City-Pairs; Temporary Regulation

AGENCY: Office of Personal Property, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation prescribes policies, procedures, and requirements that apply to Federal agencies when contract airline passenger transportation is provided. The General Services Administration has greatly increased the number of city-pairs and airlines under the contract airline program. This regulation announces the city-pairs awarded under contract to the air carriers listed in the Federal Travel Directory, and continues the successful program of reducing Government travel expenses. Due to the increased volume, the city-pairs and contractor airlines will not be shown in this regulation. Rather, the city-pairs, applicable contract fares and the airlines under contract to GSA will be shown in the Federal Travel Directory. Government employees should order copies of the Federal Travel Directory through their appropriate headquarters administrative office.

DATES: Effective date: October 1, 1982. Expiration date: September 30, 1983.

ADDRESSES: Single copies of the Federal Travel Directory may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238.

FOR FURTHER INFORMATION CONTACT: Joseph M. Napoli, Policy Development and Analysis Division (703-557-1256).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more, a

major increase in costs to consumers or others, or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and maximize the net benefits; and has chosen the alternative approach involving the least net cost to society. By reinstating a city-pairs report, the General Services Administration requires agencies subject to this regulation to furnish information on the use of scheduled airlines by employees on official travel. These reports are necessary for enforcing the use of contract airlines, for identifying problem areas in the contract airline program, for developing statistics reportable to Congress, for supporting the budgetary process, and for attracting carrier participation in the bidding/contracting system. Interagency information collection requirements contained in this regulation have been approved under the provisions of FPMR 101-11.11 and have been assigned Interagency Report Control No. 0242-GSA-XX with an expiration date of July 31, 1985.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

October 30, 1982.

[Federal Property Management Regulations Temporary Regulation A-22]

Subject: Use of contract airline service between selected city-pairs

1. *Purpose.* This regulation prescribes policies, procedures, and requirements applicable to Federal agencies when contracts for airline passenger service have been awarded between selected city-pairs.

2. *Effective date.* This regulation is effective October 1, 1982.

3. *Expiration date.* This regulation expires on September 30, 1983, unless superseded or canceled.

4. *Background.* The General Services Administration (GSA) has made additional contract awards with certificated air carriers to furnish air passenger transportation for official Government travel between selected city-pairs at reduced fares.

5. *Scope.* The extent to which this regulation applies to Government employees and members authorized to travel at Government expense is as follows:

a. Executive and other Federal agencies are governed by this regulation to the extent specified in the Federal Property and

Administrative Services Act of 1949, as amended, and 5 U.S.C. 5701, et seq.;

b. The Department of Defense (DOD) shall follow the procedures established in the Military Traffic Management Regulation (AR 55-355/NAVSUPINST 4600.70/MCO P4600.14A/DLAR 4500.3); and

c. The following are exempt from the mandatory use of the airline contracts; however, all exempted personnel are authorized and encouraged to use these services when the use thereof is acceptable to the contract airlines:

(1) Uniformed members of the Public Health Service, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard;

(2) Employees of the Judicial Branch of the Government;

(3) Employees and members of the House of Representatives and Senate of the United States Congress;

(4) Employees of the U.S. Postal Service;

(5) Foreign Service officers;

(6) Cost-reimbursable contractors working for the Government; and

(7) Employees of any agency having independent statutory authority to prescribe travel allowances and who are not subject to 5 U.S.C. 5701-5709.

8. *Applicability.* The provisions of this regulation are mandatory on the agencies defined in subpar. 5a for all official travel by air between the city-pairs listed in the Federal Travel Directory (see par. 14). Noncontract airlines may be used between the listed city-pairs only under the travel conditions specified in subpar. 11b.

7. *Responsibility of the contract airline.* a. The contractor is not required to furnish services if, at the time of the request for service, the scheduled aircraft is fully loaded; nor shall the contractor be required to furnish any additional aircraft to satisfy the transportation requirement. However, the contractor will provide the official Government traveler with services that are the same as those provided to its commercial passengers in scheduled jet coach service. The carrier will make reservations for Government travelers on the same basis as for regular coach service travelers and shall not discriminate in favor of commercial travelers.

b. The contractor is to comply with all rules and regulations required by the Civil Aeronautics Board, including tariff filing or any required exemptions to sections 403, 404, and other provisions of the Federal Aviation Act of 1958, to permit carriers to contract for and to furnish air transportation in accordance with the contract.

c. The contractor is to use the designator "YCA" in describing contract fares under this regulation.

8. *Procedures for obtaining service.* a. Except as provided in b, below, contract air service shall be ordered by the issuance of GTR's either directly to the carrier contractor or indirectly to a travel agent under contract to GSA. (See par. 9 on use of travel agents.)

b. When a traveler uses cash to procure service under FPMR 101-41.203-2, the traveler shall be prepared to authenticate the trip as official travel. When cash is used, the contractor airlines listed in the Federal

Travel Directory have the option of furnishing services at either the contract or noncontract fare. If only one contract is awarded between a city-pair and the contractor does not provide a contract fare with the use of cash, the traveler shall procure service from an airline offering the lowest noncontract fare. If more than one contract has been awarded between a city-pair, the traveler shall observe the order of carrier succession in selecting a contractor which provides a contract fare with the use of cash. If none of the contractors provides a contract fare with the use of cash, the traveler shall procure service from an airline offering the lowest noncontract fare. Cash or personal credit cards shall not be used to circumvent the Government's contract with the airlines.

c. When a reservation for contract air service is requested, the fare basis shall be identified as "YCA," and the carrier's ticket agent shall be instructed to apply the appropriate fare basis and contract fare. Agencies using teletype ticketing equipment shall examine airline tickets to determine whether the correct fare basis and contract fare have been applied. Improperly rated or fared tickets shall be canceled, and new tickets shall be issued. Tickets picked up at the airline ticket offices shall be verified to ensure that the proper fare basis is shown on the ticket.

d. Contract fares apply only between the cities named in the Federal Travel Directory and are not applicable to or from intermediate points. The contract fares, however, are applicable in conjunction with other published fares or other contract fares.

e. When a city-pair published in the Federal Travel Directory indicates that only one contract is awarded and the contractor subsequently offers a fare lower than its YCA fare, the ordering agency may elect to use the lower fare if qualifications for obtaining the lower fare are compatible with the agency's travel requirements.

9. *Use of travel agents.* The General Services Administration has entered into contracts with various commercial travel agents and has established travel centers in certain locations for the purpose of conducting a test in the use of commercial travel agents for Federal agencies. These travel agents are responsible for providing and arranging all travel services to Federal travelers. The travel agents are assigned Standard Form 1169, U.S. Government Transportation Request (GTR), numbers by each participating Government agency, and the assigned GTR numbers shall be shown on all transportation tickets issued by the travel agent. (See GSA's Federal Travel Directory for the location of travel agents.)

10. *Multiple awards between the same city-pair.* a. When a City-pair published in the Federal Travel Directory indicates that multiple contracts are awarded, the contractors are listed in descending order from the carrier (primary) offering the lower fare to the carrier (secondary) offering the next higher fare. Except as otherwise provided in this paragraph, agencies shall request reservations from the contract carriers in the order of succession, as listed.

(1) If service by contract carriers is provided at different airports but still

between the same city-pair listed in the Federal Travel Directory, the lowest overall cost, including the contract fare, lost productive time, and ground transportation, will determine which carrier will be used.

(2) The secondary carrier shall be used when the primary carrier cannot provide the service required by the ordering agency or when official travel falls within one of the following exceptions:

(a) Airline seating capacity on any scheduled flight of the primary carrier is not available in sufficient time to accomplish the purpose of the travel;

(b) The use of the primary carrier's flight would require additional overnight lodging;

(c) The scheduled flight of the primary carrier is not compatible with the agency policies and practices regarding travel during regularly scheduled workhours (for further information, see the Federal Personnel Manual, Supplement 990-2); or

(d) Exigency or other requirement of the mission necessitates the use of another airline or mode of transportation.

b. When a contract carrier offers a fare lower than its YCA fare, the ordering agency may elect to use the lower noncontract fare provided the qualifications for obtaining the lower fare are compatible with the agency's travel requirements and provided a comparison of total costs as prescribed in subpar. 11b(4) justifies a change in the order of carrier succession. For example, if the YCA fares for the same city-pair are \$68 for carrier A and \$75 for carrier B and carrier A offers a fare lower than \$68, the lower fare may be used. If, on the other hand, carrier B should offer a fare lower than \$68 and carrier A remains eligible to furnish service under its contract, carrier B's lower fare may be used if a cost comparison under subpar. 11b(4) justifies the use of carrier B's lower fare. By offering to the general public an unrestricted fare that is lower than its YCA fare, the contract carrier assumes the status of a noncontract carrier.

11. *Use of noncontract airline carriers between listed city-pairs.* a. Heads of agencies are authorized to approve the use of noncontract air carriers between city-pairs listed in the Federal Travel Directory when their use is justified under the conditions noted in b, below. This authority may be delegated provided that appropriate guidelines in the form of regulations or other written instructions are furnished the designee. Redlegation authority shall be limited. The delegation and redelegation of authority shall be held to as high an administrative level as practical to ensure adequate consideration and review of the circumstances requiring the use of noncontract air carriers.

b. Use of noncontract air carriers is justified when contract air carriers cannot provide the services required by the ordering agency or when official travel falls within one of the exceptions noted in (1) through (5), below. Justifications for the use of noncontract air carriers will be authorized on individual travel orders (if known before travel begins) or approved on vouchers (if not known before travel begins).

(1) Airline seating capacity on any scheduled flight of the contract carrier is not available in sufficient time to accomplish the purpose of the travel.

(2) The use of the contract carrier's flight would require additional overnight lodging.

(3) The scheduled flight of the contract carrier is not compatible with the agency policies and practices regarding travel during regularly scheduled workhours. (For further information, see the Federal Personnel Manual, Supplement 990-2.)

(4) On the basis of a comparison of total costs for each individual trip, the use of a "Y" or "S" Class fare is less than the contract fare at the time the reservation is made considering such cost factors as actual transportation costs, subsistence, allowable overtime, or lost productive time. Promotional or restrictive fares (e.g., seating space or time limitations) shall not be used in the cost comparison.

(5) Exigency or other requirement of the mission necessitates the use of another airline carrier or mode of transportation.

12. *Traveler liability.* In the absence of specific authorization or approval stated on or attached to the travel authorization or travel voucher, the traveler shall be responsible for any additional costs resulting from the use of noncontract service or contract services that violate the order of carrier succession. The additional costs shall be the difference between the unauthorized contract or noncontract air service used and the lowest appropriate contract fare applicable under this regulation.

13. *Contract airline city-pairs report.* a. For the 12-month period commencing October 1, 1982, heads of agencies shall submit three reports on airline services used between city-pairs listed in the Federal Travel Directory.

The first report will cover October through January; the second, February through May; and the third, June through September. Each report shall be submitted within 30 calendar days following the close of the reporting period. Negative reports are required. Reports shall be sent to General Services Administration, Office of Transportation, Washington, DC 20406. Interagency Report Number 0242-GSA-XX, having an expiration date of July 31, 1985, has been assigned to this report in accordance with FPMR 101-11.11.

b. Using the format set forth in attachment A, agencies shall furnish reports containing the following information:

(1) Name of submitting agency or department;

(2) A listing of each city-pair traveled by air during the reporting period;

(3) The total number of trips taken between each city-pair listed (specify one-way or round trip);

(4) The total number of trips taken between each city-pair listed for which contract fares were applied (specify one-way or round trip);

(5) Total savings resulting from the use of contract fares on each city-pair listed (compute the difference between the contract fares and the published applicable tariff or noncontract fares for the class of service that normally would have been used);

(6) Reasons for not using the specified contract air carriers (show total number of trips for each reason noted in attachment A); and

(7) Other remarks, as considered appropriate.

14. *The Federal Travel Directory.* Under the terms of the airline contract, fares may change during the contract period. Also, during the period of the contracts, city-pairs

may be added or dropped. Accordingly, contract fares and the city-pairs are not published in this regulation, but are published by GSA in the Federal Travel Directory. Government employees should order copies of the Federal Travel Directory through their appropriate headquarter administrative office. Single copies may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238. Agencies are reminded to verify the contract fare with the contract airline at the time reservations are confirmed.

15. *Collective agreements.* This regulation shall not be interpreted to nullify any valid, negotiated agreement between management and a union covering the provision of employee travel in effect on the effective date of this regulation. Upon the expiration of agreements exempted, the provisions of this regulation shall apply.

16. *Comments.* Comments and recommendations concerning the use of this regulation and its provisions may be submitted to the General Services Administration, Office of Transportation, Washington, DC 20406.

17. *Cancellation.* FPMR Temporary Regulation A-19 and supplements thereto are canceled.

18. *Effect on other directives.* All references to FPMR Temporary Regulation A-19 in the Federal Travel Regulations (41 CFR Part 101-7) shall be changed to refer to this regulation.

Ray Kline,

Acting Administrator of General Services.

BILLING CODE 6820-AM-C

CONTRACT AIRLINE CITY-PAIRS REPORT

AGENCY/DEPARTMENT:

PERIOD COVERED: thru

[illegible]

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TOTALS

OW - one-way
RT - round trip

1/ - Airline seating capacity on any scheduled flight of the contract carrier was not available in sufficient time to accomplish the purpose of the travel.

2/ - The use of the carrier's flight would have required additional overnight lodgings.

3/ - The scheduled flight of the contract carrier was not compatible with the agency policies and practices regarding travel during regularly scheduled workhours.

4/ - On the basis of a comparison of total costs for each individual trip, the use of a "Y" or "S" Class fare is less than the contract fare at the time the reservation is made considering such cost factors as actual transportation costs, subsistence, allowable overtime, or lost productive time (promotional or restrictive fares shall not be used in the cost comparison).

5/ - Exigency or other requirements of the mission necessitated the use of another airline carrier or mode of transportation.

REMARKS

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 82-500]

Commission Organization; Revision of the Commission's Rules Pertaining to National Security Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action revises and retitles Subpart D, Part 0 of the Commission's Rules pertaining to the Mandatory Declassification of National Security Information.

The revision informs members of the public of the procedures to be followed in submitting requests for declassification and establishes internal processing and disposition procedures for such requests.

This action is taken by the Commission in order to comply with the procedural requirements of Executive Order 12356, National Security Information.

DATE: Effective: November 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Fred J. Goldsmith, Office of the Managing Director, (202) 632-7143.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Classified information.

Adopted: November 9, 1982.

Released: November 12, 1982.

1. Executive Order 12356, National Security Information, requires that agencies which handle classified information promulgate regulations identifying the information to be protected, prescribe classification, downgrading, declassification and safeguarding procedures, and establish a monitoring system to ensure compliance. The Executive Order further requires that those portions of the regulations which affect members of the public be published in the **Federal Register**.

2. To comply with the latter requirement of the Executive Order, we are hereby revising and retitling Subpart D, Part 0, of the rules. The revision is set out in the attached Appendix. Because the Order concerns only Commission policies and procedures and implements Executive Order 12356, the prior notice and effective date

provisions of 5 U.S.C. 553 are inapplicable. Authority for adoption of this revision is contained in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and Executive Order No. 12356.

3. Accordingly, it is ordered, effective November 12, 1982, that Part 0 of the Rules and Regulations is revised as set out in the Appendix attached hereto.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

William J. Tricarico;

Secretary.

Appendix

Subpart D, Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is revised to read as follows:

Subpart D—Mandatory Declassification of National Security Information

Sec.

0.501 General.

0.502 Purpose.

0.503 Submission of requests for mandatory declassification review.

0.504 Processing requests for declassification.

0.505 Fees and charges.

0.506 FOIA and Privacy Act requests.

Authority: Secs. 4(i), 303(r), Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)).

§ 0.501 General.

Executive Order 12356 requires that information relating to national security be protected against unauthorized disclosure as long as required by national security considerations. The Order also provides that all information classified under Executive Order 12356 or predecessor orders be subject to a review for declassification upon receipt of a request made by a United States citizen or permanent resident alien, a federal agency, or a state or local government.

§ 0.502 Purpose.

This subpart prescribes the procedures to be followed in submitting requests, processing such requests, appeals taken from denials of declassification requests and fees and charges.

§ 0.503 Submission of Requests for Mandatory Declassification Review.

(a) Requests for mandatory review of national security information shall be in writing, addressed to the Managing Director, and reasonably describe the information sought with sufficient particularity to enable Commission personnel to identify the documents

containing that information and be reasonable in scope.

(b) When the request is for information originally classified by the Commission, the Managing Director shall assign the request to the appropriate bureau or office for action.

(c) Requests related to information, either derivatively classified by the Commission or originally classified by another agency, shall be forwarded, together with a copy of the record, to the originating agency. The transmittal may contain a recommendation for action.

§ 0.504 Processing Requests for Declassification.

(a) Responses to mandatory declassification review requests shall be governed by the amount of search and review time required to process the request. A final determination shall be made within one year from the date of receipt of the request, except in unusual circumstances.

(b) Upon a determination by the bureau or office that the requested material originally classified by the Commission no longer warrants protection, it shall be declassified and made available to the requester, unless withholding is otherwise authorized under law.

(c) If the information may not be declassified or released in whole or in part, the requester shall be notified as to the reasons for the denial, given notice of the right to appeal the denial to the Classification Review Committee, and given notice that such an appeal must be filed within 60 days of the date of denial in order to be considered.

(d) The Commission's Classification Review Committee, consisting of the Managing Director (Chairman), the General Counsel or his designee, and the Chief, Internal Review and Security Division, shall have authority to act, within 30 days, upon all appeals regarding denials of requests for mandatory declassification of Commission-originated classifications. The Committee shall be authorized to overrule previous determinations in whole or in part when, in its judgment, continued classification is no longer required. If the Committee determines that continued classification is required under the criteria of the Order, the requester shall be promptly notified and advised that an application for review may be filed with the Commission pursuant to 47 CFR 1.115.

§ 0.505 Fee and Charges.

(a) The Commission has designated a contractor to make copies of

Commission records and offer them for sale (See § 0.465).

(b) An hourly fee is charged for recovery of the direct costs of searching for requested documents (See § 0.466).

§ 0.506 FOIA and Privacy Act Requests.

Requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, (See § 0.461), of the Privacy Act of 1974, (See § 0.554) shall be processed in accordance with the provisions of those Acts.

[FR Doc. 82-32177 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 0, 1, 13

[FCC 82-501]

U.S. Citizenship Eligibility Requirements for Commercial Radio Operators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules, 47 CFR Part 0, 47 CFR Part 1, and 47 CFR Part 13, to remove U.S. citizenship as an eligibility requirement for commercial radio operator licenses. This action was necessary to conform the Commission's Rules to the provisions of Pub. L. 97-259, enacted September 13, 1982.

EFFECTIVE DATE: November 26, 1982.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Barnett C. Jackson, Jr., (202) 632-7240, or

Lawrence Clance, (202) 632-7591.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 13

Commercial radio operator's licenses.

Adopted: November 9, 1982.

Released: November 12, 1982.

By the Commission.

1. On September 13, 1982, Pub. L. 97-259 amended Section 303(1) of the Communications Act of 1934 authorizing the Commission to issue commercial radio operator licenses to "persons who are found to be qualified by the Commission and who otherwise are

legally eligible for employment in the United States." Previously, that section authorized the Commission to issue commercial radio operator licenses only to U.S. citizens, U.S. nationals, and citizens of the Trust Territory of the Pacific Islands, with certain exceptions in the case of alien aircraft pilots and alien radio station licensees.

2. We are revising our rules to conform to the amended provisions of Section 303 of the Communications Act. We are also making certain editorial revisions to Part 13 of our Rules to improve readability.

3. Because these rule amendments are made to conform with the Communications Act of 1934, as amended, we find that prior notice and public procedure are unnecessary. (5 U.S.C. 553(b)(3)(B)) Furthermore, as the rule amendments adopted herein relieve a restriction, we are designating that these rule amendments shall become effective upon publication in the *Federal Register*. (47 U.S.C. 408) (5 U.S.C. 553(d))

4. Accordingly, it is ordered, That Parts 0, 1, and 13 of Title 47 of the Code of Federal Regulations are amended as set forth in the Appendix attached hereto. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended. (47 U.S.C. 154(i) and 303(r)).

5. For information on this matter contact B. C. "Jay" Jackson, Jr., Regional Services Division, FCC, Washington, D.C. 20554, (202) 632-7240.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—[AMENDED]

A. Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 0.483 is revised to read as follows:

§ 0.483 Applications for amateur or commercial radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in Part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in Part 13 of this chapter. Detailed information about application forms, filing procedures, and places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field

office or the FCC, Washington, D.C. 20554.

2. Section 0.485 is revised to read as follows:

§ 0.485 Amateur and commercial radio operator examinations.

Written examinations and Morse telegraphy examinations are conducted at prescribed intervals or by appointment at locations specified in the Commission's current examination schedule, copies of which are available from any Commission field office or from the FCC, Washington, D.C. 20554.

PART 1—[AMENDED]

B. Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.77 is amended by revising paragraph (h) as follows:

§ 1.77 Detailed application procedures; cross references.

* * * * *

(h) Rules governing applications for commercial radio operator licenses are set forth in Part 13 of this chapter.

2. Section 1.83 is revised to read as follows:

§ 1.83 Applications for radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in Part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in Part 13 of this chapter. Detailed information about application forms, filing procedures, and places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field office or from the FCC, Washington, D.C. 20554.

3. Section 1.84 is amended by revising paragraph (a), and removing paragraphs (b) and (c), as follows:

§ 1.84 Procedure with respect to commercial radio operator applications.

(a) Upon acceptance of an application for a commercial radio operator license, filed in accordance with Part 13 of this chapter, an examination, if required, is conducted. If the applicant is found qualified and eligible in all respects, the license will be issued. If additional information is necessary to determine an applicant's qualifications or eligibility, or if it appears that a grant of an application would not serve the public interest, the applicant will be notified in writing and given an opportunity to provide additional

pertinent information in writing. If, from the information available, it appears that the applicant is not qualified or is ineligible, or that a grant of the application would not serve the public interest, the applicant will be advised thereof in writing and given an opportunity to request, within a specified period of time, that the application be set for hearing. If the applicant does not request, within the specified period, that the application be set for hearing, the application will be denied.

(b) [Deleted]

(c) [Deleted]

PART 13—[AMENDED]

C. Part 13 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 13.3 is revised to read as follows:

§ 13.3 Holding of more than one commercial radio operator license.

(a) No person may hold two or more commercial radiotelegraph operator licenses at the same time.

(b) No person may hold two or more commercial radiotelephone operator licenses at the same time, except as provided in paragraphs (c) and (d) of this section.

(c) Each person who is legally eligible for employment in the United States may hold one Marine Radio Operator Permit and one Restricted Radiotelephone Operator Permit at the same time, if necessary.

(d) Each person who is not legally eligible for employment in the United States, and certain other persons who were issued permits prior to September 13, 1982, may hold two Restricted Radiotelephone Operator Permits at the same time, as each permit may authorize the operation of a particular station or class of stations.

2. Section 13.4 is amended by revising paragraphs (a) and (b), and by removing paragraph (c), as follows:

§ 13.4 Term of licenses.

(a) Except as provided in paragraph (b) of this section, commercial radio operator licenses will normally be issued for a five-year term.

(b) Restricted Radiotelephone Operator Permits issued to persons legally eligible for employment in the United States will normally be issued for a term concurrent with the lifetime of the holder. The terms of all such Restricted Radiotelephone Operator Permits issued prior to November 15, 1953, which were outstanding on that

date, were extended to encompass the lifetimes of such operators.

3. Section 13.5 is amended by revising paragraph (a) as follows:

§ 13.5 Eligibility for new license.

(a) The following, if found qualified by the Commission, may be issued commercial radio operator licenses:

(1) Any person legally eligible for employment in the United States, including all U.S. citizens, U.S. nationals, and citizens of the Trust Territory of the Pacific Islands.

(2) Any person, for the sole purpose of operating aircraft radio stations, who holds:

(i) A valid United States pilot certificate; or,

(ii) A foreign aircraft pilot certificate valid in the United States, provided that the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;

(3) Any person who holds a Federal Communications Commission radio station license, for the sole purpose of operating that station.

* * * * *

4. Section 13.11 is revised to read as follows:

§ 13.11 Application filing procedures.

(a) Detailed information about application forms, filing procedures and places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field office or from the FCC, Washington, D.C. 20554.

(b) Applications for commercial radio operator licenses will be processed in accordance with the rules and regulations in effect on the date filed.

5. Section 13.22 is amended by revising paragraph (g) as follows:

§ 13.22 Examination requirements.

* * * * *

(g) Restricted Radiotelephone Operator Permit. No examination is required for this permit. In lieu thereof, each applicant will certify that he or she:

- (1) Is legally eligible for employment in the United States; or, if not so eligible, holds an aircraft pilot certificate valid in the United States or an FCC radio station license in his or her name;
- (2) Can speak and hear;
- (3) Can keep, at least, a rough written log; and,
- (4) Is familiar with provisions of applicable treaties, laws, rules, and

regulations which govern the radio station he or she will operate.

6. Section 13.23 is revised to read as follows:

§ 13.23 Examination procedures.

(a) Applicants, when taking examinations for commercial radio operator licenses, shall comply with the examination instructions printed on the examination booklet.

(b) Written examinations shall be in English, except when waived under authority delegated in § 0.314.

(c) In the case of a blind applicant, the examination questions may be read orally by a person chosen by the Commission, and the blind applicant may answer orally. A blind applicant wishing to use this procedure must make arrangements with the appropriate field office at least two weeks prior to the date on which the examination is desired.

7. Section 13.28 is amended by revising paragraphs (a) and (b) as follows:

§ 13.28 License renewals.

(a) Commercial radio operator licenses issued for five year terms may be renewed, by proper application, at any time during the last year of the license term or during a one-year grace period following expiration. Expired licenses are not valid during the grace period.

(b) There are no service or examination requirements for renewals.

* * * * *

8. Section 13.71 is revised to read as follows:

§ 13.71 Duplicate or replacement licenses.

(a) The holder of a commercial radio operator license which has been lost, mutilated, or destroyed may obtain a duplicate license document by filing an application, with a written explanation as to the circumstances involved in the loss, mutilation, or destruction of the original license.

(b) The holder of a commercial radio operator license whose name is legally changed, or whose physical description is significantly altered, may obtain a replacement license by filing an application with a written explanation as to the change requested.

9. Section 13.76 is revised to read as follows:

§ 13.76 Limitation on certain Restricted Radiotelephone Operator Permits.

(a) A Restricted Radiotelephone Operator Permit issued to an aircraft pilot who is not legally eligible for employment in the United States is valid

only for operation of radio stations on aircraft.

(b) A Restricted Radiotelephone Operator Permit issued to a person under the waiver provision of Section 303(1)(2) of the Communications Act of 1934, as amended, is valid only for the operation of radio stations for which that person is the station licensee.

[FR Doc. 82-32467 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 22

[Gen. Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068; FCC 82-503]

Public Mobile Radio Services; Allocate Spectrum in a Certain MHz Band and To Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service.

AGENCY: Federal Communications Commission.

ACTION: Final Rule (Memorandum Opinion and Order on Reconsideration—Part 1).

SUMMARY: The Commission has issued its *Memorandum Opinion and Order on Reconsideration* (Part 1) of its *Report and Order*, in General Docket 80-183, 89 FCC 2d 1337, 47 FR 24557 (June 7, 1982), which allocated 3 MHz of spectrum from 929-932 MHz for private and common carrier one-way paging systems. The petitions raise issues dealing with both local, non-network (regional or nationwide) paging. The *Order* pertains exclusively to the common carrier local, non-network frequencies. It defers resolution of the inter-city, network paging issues to a subsequent *Order* because those issues are more complex and require further consideration. Need showing requirements have been retained for incumbent common carriers requesting an initial 900 MHz frequency, and a forty-mile separation criterion has been adopted for purposes of determining whether an applicant must demonstrate need for an initial or subsequent 900 MHz frequency because we believe it will promote competition and result in spectrum efficiency. In addition, the submissions of § 22.115(j)(8) topographic maps and § 22.115 profile graphs were waived for 900 MHz common carrier paging applications.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: Lisa Wershaw, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carriers, Mobile radio service.

Memorandum Opinion and Order on Reconsideration (Part 1)

Adopted November 16, 1982.

Released November 16, 1982.

I. Preliminary Statement

1. We have before us informal comments and four petitions for reconsideration¹ of our *First Report and Order* (the *Order*) in General Docket 80-183² allocating 3 MHz of spectrum³ for private and common carrier one-way paging systems.⁴ The petitions identify four substantive issues: the necessity for need showings by existing carriers for initial 900 MHz frequencies; definition of a market; network paging policies and procedures; and Federal preemption of state entrance, exit and rate regulations for the network paging frequencies.⁵

2. The first two issues pertain to non-network paging, while the second two relate exclusively to network paging.⁶ Our review of the petitions reveals that the non-network issues can be handled fairly easily, but the network issues will take more time to resolve. Rather than delay action on the non-network issues, we have decided to treat them separately. Therefore, this *Order* will resolve only the non-network issues and applications for those frequencies will be accepted on December 1, 1982, as established in our August 5, 1982, *Memorandum Opinion and Order*, 47 FR 35203 (August 13, 1982). While we anticipate expeditious resolution of the network paging issues, it is unlikely that

¹ Petitions were filed by Telocator Network of America (Telocator); Mobile Communications Corporation of America (MCCA); Page America Communications, Inc. (Page America); and Beep-Beep Page, Inc. (Beep-Beep Page). Informal comments were filed by American Telephone and Telegraph Company (AT&T) and United Telephone System, Inc. (UTS).

² 89 FCC 2d 1337, 47 FR 24557 (1982).

³ One MHz (forty 25 KHz frequencies) was allocated for private radio systems, one MHz was put in reserve for advanced technology paging systems and one MHz was allocated for common carrier paging systems.

⁴ This order pertains exclusively to the common carrier frequencies, 931.0125-931.9875 MHz. The Commission dealt with the private radio frequencies in its *Second Report and Order*, 47 FR 39502 (September 8, 1982).

⁵ Telocator also requested deferral of the initial filing date for 900 MHz applications. On August 5, 1982, the filing date was extended from September 7 to December 1, 1982, *Memorandum Opinion and Order*, 47 FR 35203 (August 3, 1982), therefore this issue is moot.

⁶ Three of the forty 900 MHz paging channels allocated to the Common Carrier Bureau were designated exclusively for inter-city, "network" (regional and nationwide) paging. The remaining thirty seven channels will be utilized for local or "non-network" paging.

Commission approval and public release can be accomplished before the December 1, filing date. Therefore, we will defer the date for accepting network applications until 30 days after the *Order* addressing those issues is published in the *Federal Register*.

3. As discussed below, we have decided to retain the need showing requirements for existing carriers, but we will adopt a forty mile separation criterion for purposes of determining whether an applicant is entitled to an initial or subsequent one-way paging frequency in a market without demonstrating need. On our own motion, we will eliminate the submission of certain engineering data with respect to 900 MHz applications.

II. Discussion

A. Need for Service

4. We had traditionally required common carrier applicants for one-way paging frequencies to demonstrate a public need for service.⁷ In our *First Report and Order*, we eliminated the submission of need showings by applicants for initial paging frequencies in a market. This policy applies to all paging frequencies, not only frequencies in the 900 MHz band. However, to safeguard against inefficient use of the spectrum, we proposed to authorize no more than a single paging frequency at a time. We took this action in light of the clear public need for additional one-way paging services and the determination that the preparation and submission of initial public need showings were time consuming, administratively burdensome and unnecessary to further the public interest.⁸ We concluded that a general policy in favor of new entry in the one-way paging industry would best serve the public interest, convenience and necessity.

5. However, we decided to retain need demonstrations for incumbent paging licensees who apply for a new or additional frequency in a market. Therefore, pursuant to § 22.516 of our Rules, after authorization for one paging

⁷ The need standards which have been applied to applications for an initial frequency evolved primarily out of two cases, Long Island Paging, 30 FCC 2d 405 (1971), and New York Telephone Co., 47 FCC 2d 488, *recon. denied*, 49 FCC 2d 264 (1974) *aff'd sub nom.* Pocket Phone Broadcast Service, Inc. v. FCC, 538 F. 2d 447 (D.C. Cir. 1976). Past Commission practice had been to require applicants for an initial frequency to submit a public need survey, with demographic and commercial information being accepted to supplement the need survey.

⁸ It was determined that public need showings for one initial frequency often provoked petitions to deny that delayed service while amendments to the applications invariably cured any deficiencies raised in the petitions.

frequency in a market is obtained, a licensee may apply for an additional frequency in that market only if it supplies a traffic load study which demonstrates that the existing paging facility is insufficient to meet increased demand.

6. We rejected commenters' arguments that existing carriers should have the same opportunity to enter the 900 MHz market as new carriers. We concluded that allowing an existing carrier a 900 MHz frequency without demonstrating need would result in inefficient use of the new frequencies and would frustrate our policy encouraging new carriers in the market and creating a wide range of user choices.

7. In its petition, Telocator argues and AT&T agrees that all applicants, both new and existing carriers in a market, should be permitted to apply for an initial 900 MHz paging channel without demonstrating need. Telocator contends that our discussion of warehousing in the *First Report and Order*, which justifies elimination of need showings for new entrants in a market, is an equally compelling argument to support eliminating need for all applicants. It refers to the following statements in the *First Report and Order* to support its claim that allowing existing carriers in a market an initial 900 MHz channel without demonstrating need will not encourage warehousing or inefficient use of the frequencies: "warehousing is linked to availability of frequencies; we do not believe that entrepreneurs would undertake application and construction costs absent need; and we are unaware of any warehousing to date," 89 FCC 2d 1337, 1351 and 1352 (1982).

8. Telocator further contends that the allocation at 900 MHz was originally sought to enable the RCC industry, for the first time, to provide high quality tone-voice service on a significant scale. It argues that to preclude existing carriers from providing tone-voice service, or to force them to demonstrate loading on a channel which provides different services, is both illogical and inconsistent with Commission policy encouraging competition and diversification of service offerings.

9. Moreover, Telocator argues that to the extent our decision regarding need rests on the assumption that the 900 MHz band is fungible with other paging frequencies or that all types of service offerings can be readily intermixed on a single paging network, these assumptions are false. Telocator states that it is more difficult to achieve adequate stability for simulcasting at 900 MHz than at 35 or 43 MHz (the low

band),⁹ that noise at 900 MHz is less, and the cost of a 900 MHz base station transmitter is three times the cost of its counterpart at lowband. Moreover, Telocator claims that networks employing simulcasting often use a digital equalization technology which does not pass audio signals. Therefore, to require licensees to intermix services on the same network would be forcing carriers "into a competitive mold, whereby no carrier has the option of differentiating its offerings on the basis of cost, quality of service or technical innovation."

10. Finally, Telocator argues that the *First Report and Order's* theory of competition—encouraging additional carriers in the paging market to create a wide range of user choices—is both narrow and in error. It asserts that since the paging market is already characterized by intensive competition, our focus on encouraging new entrants in the paging market is misplaced. It claims that our focus should be on whether the licensing policies are unnecessary or irrational obstacles to existing carriers in a market.

11. After carefully considering these arguments, we affirm our finding that it is in the public interest to require existing carriers in a market to demonstrate need for an additional paging frequency. There are simply not enough frequencies available for all carriers interested in providing one-way paging service to allow existing carriers another frequency without demonstrating need. Moreover, implicit in our decision to retain need showings for additional channels is the finding that there is more incentive to warehouse additional frequencies than initial frequencies. Therefore, our reasons for eliminating need showings for initial channels are not equally applicable here. We emphasize that existing carriers are not being denied entry into the 900 MHz market, they are merely being required to demonstrate need for an additional frequency.

12. We reject Telocator's argument that the technical and commercial characteristics of the 900 MHz band render it incompatible with other paging frequency service offerings. As a practical matter, it is technically feasible for a carrier to intermix tone-voice and tone-alert service or to employ simulcasting for voice paging.¹⁰ It might

be more expensive to intermix services on a single frequency; however, it is not technically impossible to do so, as Telocator suggests. Further, although Telocator argues that only the 900 MHz band is suitable for high quality tone-voice service, incumbent carriers have for years had access to UHF and VHF channels which can support high quality tone-voice service.

13. We also reject Telocator's arguments regarding its theory of competition. In light of the historic scarcity of paging frequencies, we believe that competition would not be fostered by allowing existing carriers to obtain another frequency in a market without demonstrating need. Although our recent allocations in this proceeding and in CC Docket 80-189 (lowband channels) have alleviated the historic shortage to some extent, the availability of paging frequencies remains a valid concern. Requiring need demonstrations is a rational and practical method of encouraging competition, spectrum efficiency and technological and service innovation.

B. Definition of a Market.

14. In conjunction with its need argument, Telocator urges us to redefine a market for purposes of determining whether an applicant is requesting a new or additional frequency in an area. As explained above, an existing carrier must demonstrate need, *i.e.*, that its existing facility is insufficient to meet increased demand, in order to obtain an additional frequency in a market.

15. Traditionally, we have used the "fifty percent overlap" rule to determine whether an applicant is requesting a new or additional frequency in an area. If the reliable service contours or 43 dBu contours of two transmitters licensed to or applied for by the same carrier overlap by fifty percent or more, both transmitters are deemed to be serving the same market. Therefore, the channel requested is treated as an additional rather than a new channel and it must be supported by a need demonstration. Conversely, if the reliable service areas do not overlap or overlap by less than fifty percent, they are deemed to be serving different markets and a need demonstration for the new frequency would not be required.

16. As stated above, the reliable service area for one-way paging stations is generally considered to be its 43 dBu contour. However, in our *First Report and Order*, we adopted a fixed twenty

signals, these base stations can be retrofitted to include audio signals or replaced by a base station which passes both audio and digital signals.

⁹ Simulcasting is the transmission of information from two or more base stations simultaneously.

¹⁰ Paging equipment is currently available which permits tone-alert and tone-voice services on the same frequency using simulcast. There are presently wide area paging systems which provide this dual service. Although some networks use digital equalization technology which does not pass audio

mile radius to define the reliable service area of a 900 MHz paging station. We concluded that twenty miles was a realistic, reliable standard because it is the approximate distance that a paging signal travels from a transmitter site. Consequently, for purposes of determining need, the fifty percent overlap rule would apply to a fixed twenty mile service contour as opposed to the traditional 43 dBu contour.

17. However, in its petition, Telocator requests that for purposes of determining an applicant's initial channel assignment, we define market in terms of a Standard Metropolitan Statistical Area (SMSA). Telocator states further, that after the initial channel is loaded in accordance with § 22.516, our analysis should revert to the fifty percent overlap rule. Telocator's concern is that under the present 900 MHz rules, by judicious spacing of transmitter sites at approximately 20-mile intervals, the same applicant can obtain a minimum of three different channels to serve the same market without having a fifty percent overlap among the respective service areas. It claims that the adoption of an SMSA market concept would essentially eliminate abuse of the fifty percent overlap rule.

18. We recognize the potential for an applicant to lock up several 900 MHz frequencies in a market, notwithstanding the fifty percent overlap rule. We agree with Telocator that an alternative to the fifty percent overlap rule should be adopted. However, instead of defining a market as Telocator suggests, we will eliminate the fifty percent overlap rule with respect to 900 MHz paging systems and adopt a fixed forty mile separation criterion for purposes of determining whether a traffic load study must be submitted to obtain an initial or subsequent 900 MHz paging frequency in an area.¹¹ We have adopted a forty mile separation criterion because the reliable service area contour of a base station is twenty miles. Consequently, if we require base stations to be distanced by forty miles there will not be any overlap between the twenty mile reliable service area contours of these stations. Therefore, if an applicant for a paging frequency attempts to distance its proposed base station less than forty miles from a previously licensed base

station, the applicant must demonstrate need for the additional channel pursuant to § 22.516 of the Rules. In addition, this fixed mileage requirement will also apply if a 900 MHz licensee wishes to obtain a new or additional paging system on another paging frequency at 35, 43, or 150 MHz.

19. We find that adoption of a forty mile separation criterion for purposes of determining whether an applicant is requesting a new or additional frequency in an area, will best serve the public interest. This appears to be a more effective way to eliminate the possibility of an applicant acquiring several 900 MHz frequencies in an area than Telocator's proposal. Further, it is more easily administered than an SMSA standard. We believe that a fixed separation criterion is consistent with the Commission's desire to promote competition among carriers and ensure spectrum efficiency. Moreover, it will eliminate the economic burden to the applicant and the administrative workload to the Commission associated with preparing and analyzing engineering contour studies. Finally, the public will benefit by the Commission's expeditious authorization of service.

C. Technical Matters

20. We have decided to waive the requirements that certain engineering data be submitted with 900 MHz applications. Our *First Report and Order* adopted a 20 mile reliable service area definition and a fixed 70 mile separation criterion to determine frequency reuse instead of relying on interference studies. Therefore, the topographic maps presently required by § 22.115(j)(8) and the profile graphs required by § 22.115 of the Rules need not be submitted with 900 MHz paging applications. However, should the Commission need these maps and graphs in the future, the applicant will be responsible for providing them at that time. Moreover, the maps required to be submitted with the application should be U.S. Geological Survey maps with a scale of 1:250,000 (full scale reductions are not permitted) depicting each base station site and its respective service area contour. The map must also indicate latitude and longitude. These maps are necessary to provide us with a perspective of the applicant's system design and will enable us visually to determine if there is overlap between service area contours. Notice and comment are not required prior to waiver of this rule because it relates to Commission procedure and practice. 5 U.S.C. 553(b). Because this rule is procedural, not substantive, the

effective date provisions of the Administrative Procedures Act, 5 U.S.C. 553(d), do not apply here.

D. Other Matters

21. Finally, we will reemphasize several policies which were adopted in the *First Report and Order*. First, the decision to authorize one frequency at a time applies to all paging bands, not only 900 MHz frequencies. 89 FCC 2d 1349, 1350. Therefore, this limit is applicable to all paging applications that have been filed and to all paging frequencies which will be filed after the adoption of this Order. Further, if an applicant files for a one-way paging frequency when it has another paging application pending in that market, *irrespective of the frequency band*, the Commission will treat the previously filed paging application as being amended by the subsequent application. *Id.* at 1363-1364. The amended application will then be considered newly filed and subject to applicable cut-off procedures. 47 CFR 22.23(c)(i); 22.31. Finally, § 22.13, pertaining to disclosure of the real party or parties in interest, was revised in the *First Report and Order*. We emphasize that this rule applies to all common carriers engaging in Domestic Public Land Mobile Radio Services. Thus, it is applicable to applicants for two-way mobile services as well as one-way paging services. *Id.* at 1353, n.29, and 1366.

III. Conclusion

22. After careful consideration of the issues pertaining to non-network paging, we have decided to retain need showing requirements for incumbent carriers in a market, and to adopt a fixed forty mile separation criterion to determine whether an applicant is requesting a new or additional channel in an area.

23. We have attempted to streamline and simplify the regulatory procedures for 900 MHz applications. This is evidenced by the elimination of engineering contour studies for the definition of a market, reliable service area and frequency re-use calculations and the elimination of public need showings for all initial paging channels. We believe that the procedures adopted herein, represent the most efficient and expeditious way to render 900 MHz non-network paging services to the public.

IV. Ordering Clauses

24. Accordingly, it is ordered, That the petitions for reconsideration are granted to the extent set forth herein, and are otherwise denied.

25. It is further ordered, That pursuant to the authority found in section 154(i),

¹¹ This policy should not be confused with the fixed 70 mile separation criterion adopted for frequency reuse purposes. To prevent interference, we will not license different applicants on the same frequency unless base stations are separated by 70 miles. The separation criterion discussed above, pertains to the same applicant who wants a new frequency in a market.

301 and 303(r) of the Communications Act of 1934, as amended, Parts 2 and 22 of the Commission's Rules and regulations are amended as specified in Appendix A. These amendments shall become effective 30 days after publication of this *Memorandum Opinion and Order* in the *Federal Register*.

26. It is further ordered, That the requirements of 47 CFR 22.115(j)(8) and 22.115 are hereby waived for a one-way paging application requesting a 900 MHz paging frequency.

27. It is further ordered, That applications for 900 MHz network paging frequencies will be accepted thirty days after the Order resolving those issues is published in the *Federal Register*.

28. It is further ordered, That applications for 900 MHz non-network paging frequencies will be accepted on December 1, 1982, for an initial period of 60 days only.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix A

PART 22—[AMENDED]

47 CFR Part 22 is amended as follows:

1. 47 CFR 22.516 is amended by revising the heading and the introductory language as follows:

§ 22.516 Additional showing required with application for assignment of additional frequency or frequencies, or as otherwise required by the Commission's Rules.

Traffic load studies shall be required:

(1) With an application requesting the assignment of an additional frequency for an existing one-way signaling station; (2) with an application requesting the assignment of one or more additional frequencies for an existing two-way station; or (3) as the Commission may otherwise prescribe. A traffic load study shall include a showing of the following:

* * * * *

2. Part 22 is amended by adding new § 22.525 to read as follows:

§ 22.525 One-way signaling stations.

(a) An applicant for a new one-way signaling station may request no more than one channel. No showing of public need will be required of an applicant for an initial channel regardless of the band for which the request is made.

(b) An applicant requesting a new 900 MHz one-way signaling station will be deemed to be requesting additional frequencies for its existing station if there is less than forty miles distance between the applicant's existing base station and its proposed base station. An existing 900 MHz licensee requesting a one-way frequency will be deemed to be requesting an additional frequency if its proposed base station is less than forty miles from its existing 900 MHz base station.

(c) An applicant for an additional transmitter location within the service area of its existing station, and on the same frequency, will not be required to demonstrate public need for the new facility. The applicant may not reduce the distance between its own station location(s) and a co-channel station below that specified in § 22.503(c) as a result of the addition of a new transmitter location unless the frequency is time-shared to avoid interference.

(d) An applicant for an additional channel must demonstrate the need for it by submitting a traffic load study pursuant to § 22.516.

(e) An applicant filing an application for a 900 MHz paging frequency at a location within forty miles of a pending one-way application, without dismissing the previously filed pending application, will be treated as amending the previous application. The amended application will be considered newly filed and subject to the applicable cut-off procedures. A pending 900 MHz application will be amended by a subsequent application for any one-way paging frequency, if the base station location is within forty miles of the location requested in the pending 900 MHz application.

(f) In the cases where the pending or newly filed applications do not involve the 900 MHz band, an applicant requesting a new one-way signaling station will be deemed to be requesting additional frequencies for its existing station if either (1) the transmitter location specified in the new application is within the service area of the existing station, or (2) there is an overlap or 50 percent or more between the service areas of the existing and proposed facilities.

[FR Doc. 82-32476 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No. MC-99; Amendment No. 81-6]

Driver's Logs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) to reduce the burden for drivers and motor carriers by revising the requirements for recording a driver's duty status, reducing the record retention period for both the motor carrier and the driver, and relaxing the 100-mile radius driver exemption by increasing the consecutive hours worked criterion from 12 to 15 hours.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Information collection requirements contained in this regulation (§ 395.8) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2125-0016.

The FHWA has determined that this document is a major regulatory reduction action under Executive Order 12291 and that this rulemaking action is considered to be significant under the DOT's regulatory policies and procedures. A regulatory impact analysis and regulatory flexibility analysis is available for inspection in the public docket and may be obtained by contacting Mr. Neill Thomas of the program office at the address specified above.

On February 17, 1982, the FHWA issued a Notice of Proposed Rulemaking (NPRM) (Docket No. MC-99; No. 82-2, 47 FR 7702, February 22, 1982) seeking comments on a proposal to reduce the paperwork burden for motor carriers and drivers by eliminating the required driver's log forms. Comments were due by April 23, 1982.

The driver's log has been the primary regulatory tool used by the Federal government, State governments, drivers, and commercial motor carriers to determine a driver's compliance with the maximum hours of service limitations prescribed in the FMCSR. For example, during the last six months of 1981, the Bureau reviewed over 600,000 logs for driver and carrier compliance with the hours of service requirements. This included logs checked during management audits made at the carrier's terminals and those checked during roadside inspections. The information obtained from the log is used to place drivers out of service when they are in violation of the maximum limitations at the time of inspection. It is also used in determining a motor carrier's overall safety compliance status in controlling excess on duty hours, a major contributory factor in fatigue induced accidents. Additionally, it has traditionally been the principal document that is accepted by the court system as evidence to support enforcement actions for excess hours of service violations. Many motor carriers use the log to determine whether a driver has available hours to drive within the limitations set out in the regulations. Currently, it is the only single universally recognized instrument available to both Government and industry to insure compliance with the hours of service rules. Termination of a recordkeeping requirement, in light of the demonstrated need for enforcement, would be contrary to the very essence of the safety regulatory philosophy of the FHWA and in contradiction to the Act under which it was promulgated.

History

In 1935, Congress enacted the Motor Carrier Act, 49 Stat. 543, which was designated as Part II of the Interstate Commerce Act (IC Act). The major objective of the Act was the preservation and fostering of safe, efficient and economical highway movements in interstate commerce.

The statutory authority under which the FMCSR are issued is contained in 49 U.S.C. 304, Interstate Commerce Act, and 49 U.S.C. 1655, Department of Transportation Act.

Section 204(a) of the IC Act provides for the establishment of regulations relating to the qualifications and maximum hours of service of employees of common and contract carriers, as well as the safety of operations and equipment of those carriers. In addition, the regulations apply to the safety of operations of private carriers of property pursuant to Section 204(a)(3) of the IC Act which authorizes subjecting

certain private motor carriers to safety regulations "if need therefor is found." The Interstate Commerce Commission (ICC) made that requisite finding in 1940. (Motor Carrier Safety Regulations—Private Carriers, 23 M.C.C. 1 (1940), modified on reconsideration, 26 M.C.C. 205 (1940), further modified, 26 M.C.C. 477 (1940)). Private carriers of property are governed by the same safety regulations as common or contract carriers.

The driver's daily log was first prescribed by the ICC in Ex Parte MC-2, by order dated July 15, 1938, and later modified by order issued February 8, 1939, effective January 1, 1940. The original log contained eight separate duty status lines plus a remarks section. In addition, it contained the carrier name and main office address, date, driver's signature, home terminal, mileage, company accounting number, and summary of duty hours.

In establishing the log requirement, the ICC stated "For the enforcement of the regulations prescribed herein and for other purposes, we will require the keeping of a driver's log. This log, the precise form of which will be defined in a supplemental order prior to the effective date of our regulations herein, will bring out the essential facts respecting the places at or between which the driver has operated vehicles within a 24 hour period, the length of the on-duty period, the distribution of this period between driving time and time otherwise spent, and such other information as is deemed necessary. The log will be written up by the driver, and he will be required to keep one copy with him while on duty. A second copy will be required to be filed with the carrier-employer daily or at the end of each trip. This copy will be retained by such carrier in its files, subject to our inspection or other use, for such time as our regulations with respect to the destruction of records, shall require. Where, as the record shows, carriers use for payroll or other purposes data of a kind required to be shown on this log, there will be no objection to the entering, by the driver or the carrier, of additional information on such log."

Effective July 1, 1952, the log was completely revised as Form BMC 54, prescribed by the ICC (Budget Bureau No. 60-R253.2). The log was reduced from 8 duty status lines to four: 1. off duty; 2. sleeper berth; 3. driving; and 4. on duty (not driving). Minor revisions were made in 1965 (Budget Bureau No. 60-R253.3) to establish the log which is used today, i.e., Form MCS-59, Driver's Daily Log.

Since that time, several rulemaking actions have been initiated concerning the log requirements. For example, a one year test program commenced April 1, 1973, in response to a petition for rulemaking filed by the American Trucking Associations, Inc. (ATA). The ATA requested adoption of a form of log which would permit 7 days of driver's activities to be entered on a single sheet of paper. A variety of problems were encountered during this test program.

An Advance Notice of Proposed Rulemaking (ANPRM), published in the *Federal Register* on September 10, 1974 (39 FR 32620), proposed to permit the use of a 7-day log accompanied by restrictions and limitations on its general use. The comments submitted in response to the ANPRM indicated concerns and problems similar to those encountered during the test program.

As a result of the comments filed in response to the ANPRM and the results of the test program, an NPRM was published in the *Federal Register* on January 22, 1976 (41 FR 3311), proposing a 4-day log. The 4-day log was proposed in lieu of the 7-day log to offset the many enforcement problems that would have arisen through the use of the 7-day log.

In response to the aforementioned two rulemaking proposals, the ANPRM (7-day log) and the NPRM (4-day log), another NPRM was published in the *Federal Register* on April 4, 1977 (42 FR 17891), which proposed a multi-day log. Twenty-six supporting comments favoring the multi-day log concept were received. There were no opposition comments received. A final rule was published on November 2, 1977, (42 FR 58525) implementing a multi-day log. The final rule became effective upon issuance.

The multi-day log consists of two parts. Form MCS-139 is the first part of the multi-day log and may be used independently as a single-day log. This part includes information not included on form MCS-139A, which is a continuation portion of the multi-day log. Motor carriers may have as many as 8 day's logs on one sheet of paper. This action reduced considerably the number of sheets of paper a carrier or driver processed if the carrier chose to use the multi-day log as prescribed in § 395.9 of the FMCSR.

In 1938, when the ICC prescribed a log, relatively little criticism was directed against the rule. Substantially all of the witnesses agreed that a log was necessary insofar as over-the-road vehicles were concerned. Since that time, many modifications of the log have been made when research or petitions

provided information which warranted such action. It has been the policy of the FHWA to consider burden reduction when such action does not negatively affect safety.

On December 27, 1974, Congress created the Commission on Federal Paperwork (CFP) (Pub. L. 93-556). The CFP was established to study and investigate statutes, policies, rules, regulations, and information management procedures of Federal agencies to ascertain changes necessary to reduce paperwork burden on the public and/or industry. The legislation further directed the CFP to identify specific paperwork problems and initiate actions with responsible Federal agencies to achieve immediate solutions where possible.

In 1976, during the course of its studies, the CFP pinpointed the driver's logs as excessively burdensome. The CFP recommended that the FHWA discontinue the log and that an alternate monitoring system be devised to attain compliance with the hours of service regulations. Because the FHWA was already considering the use of multi-day logs at the time of the recommendation, no additional rulemaking was initiated in response to the CFP's recommendation.

When the CFP was dissolved, the implementation of its recommendations was assigned to the OMB. The OMB has, since that time, received further authority to oversee regulatory actions, past and present, to assure that unnecessary or particularly burdensome requirements are alleviated. The statutory authority for this function is found in the Paperwork Reduction Act of 1980, Pub. L. 96-511. Additional authority is contained in Executive Order 12291, dated February 17, 1981. Further attention has been given to the matter of regulatory burden on small business in the Regulatory Flexibility Act of 1980, Pub. L. 96-354.

The driver's log has existed with OMB (formerly the Bureau of Budget) approval for at least 30 years. However, in light of the CFP recommendations and the other cited authority, the OMB renewed its approval of the forms pending completion of a research study, entitled "Alternate Methods of Regulating Commercial Motor Vehicle Drivers' Hours of Service," Chilton Co., Contract No. DOT-FH-11-9414, and subsequent rulemaking action based on the findings of the study. The study was completed in February 1982. Authority for the use of the present logs has been extended until January 1, 1983.

Test Program

Although the preliminary results of the test program indicated that the modified trip report appeared to be an acceptable alternative to the driver's log, there is a distinct unavoidable bias in the final test program results. The drivers in the program were all employed by fleets whose managements were initially receptive to experimentation with the alternate concepts. Having made such a decision, these managements, it could be argued, had a vested interest in making the program work. Management reactions to the alternatives were almost universally enthusiastic for the modified trip report, but ranged from enthusiastic to negative for the tachograph chart. In both cases, there appeared to be little or no increase in administrative costs while supportive evidence, particularly in the larger fleets, did surface to suggest that an administrative cost reduction does result with the use of modified trip reports.

Although there were a number of problems enumerated and discussed throughout the final report of the test program (Alternative Methods of Regulating Commercial Motor Vehicle Driver's Hours of Service, Final Report, February 1982, Chilton Company, Radnor, Pennsylvania), the contractor noted one exception in the report which it felt should be addressed in future regulatory action—that of multiple employers. One carrier withdrew from the program due to the refusal of interlining motor carriers to accept, in this case, the tachograph chart in lieu of the log and the drivers' objections to maintaining both duty status reports. The report stated that the regulations must stress that "there can be only one official logging record on any given day and that record must contain all hours of service activity for all employers and that each employer must receive the same identical copy of the driver's total hours of service activity."

The final rule set forth hereafter will eliminate most of the problems encountered during the test program.

Current Rulemaking Action

Approximately 1,300 comments were received in response to the NPRM of February 17, 1982, from a wide variety of respondents as shown below:

1. State regulatory agencies.
2. Trucking associations.
3. Private carriers.
4. Drivers.
5. Driver associations.
6. Union representatives.
7. Transportation groups.
8. Owner operators.

9. Hazardous materials carriers.
10. Bus associations.
11. Other interested parties.

These commenters addressed the proposed changes to the driver's log as well as a proposal concerning the present 100-mile radius driver exemption. The 100-mile radius driver exemption proposal was a response to petitions filed by the Private Truck Council of America, Inc. (PTCA), and the Continental Group, Inc., of Chicago, Illinois. The specifics of this proposal are addressed in detail later in this document.

Assessment of Comments

Supportive (No Log Requirement; Relaxation of Present Rules)

Approximately 90 of the comments received supported the proposed rules. This group of commenters was composed primarily of national associations representing motor carriers and intercity bus operators, as well as associations representing owner-operators. There were many supporting comments offered by individual motor carriers and individual owner-operators.

The comments ranged from those advocating complete abolition of all recordkeeping requirements to those urging only a slight relaxation of the present rule. For example, the Owner-Operators Independent Driver's Association of America "strongly supports elimination of the daily log as a pernicious regulation, unenforceable or inconsistently enforced, an invasion of privacy, a method of driver harassment, used to enforce ancillary regulations, often used as a strategy or method of withholding payment, and a means for carriers to enforce internal work rules." It goes on to say that the logs create a burden on owner-operators since State and local jurisdictions increase their revenues through fines for log violations. It estimates that 4 to 6 hours per week are spent filling in the log book correctly. It recommended a check-in, check-out system be used in place of the log.

Approximately 70 of the comments received in support of a rule change were from owner-operators and other drivers who urged the complete elimination of the logs as well as any other recordkeeping requirement. Those comments were based on the belief that maintenance of the logs is too costly during this current economic recession, as well as the belief that truckers realize when they need to stop for rest based on common sense. No evidence was submitted to support these contentions. Many of these commenters urged the

elimination of the hours of service rules also, which is a matter beyond the scope of this rulemaking action.

Other commenters, such as the United Parcel Service (UPS) and the American Bus Association (ABA), favor the elimination of the log requirements, particularly for regular route drivers. The UPS stated that the logs duplicate its own records which contain information required to monitor hours of service. It explained that time cards serve the same purpose as the logs for drivers who operate vehicles between fixed locations on a repetitive basis. The ABA shares this belief because, it says, bus companies establish trip schedules which are in compliance with the hours of service rules, and thus driver's hours of service are controlled with a view toward safety of bus operations. The ABA comments, which were supported by comments of Greyhound, do express support, however, of recordkeeping requirements for spare drivers.

Other commenters advocated action less extreme than the total elimination of the logs. Also, their comments more closely addressed that which was proposed in the NPRM. The American Trucking Associations, Inc. (ATA) comments were typical of the majority of comments received supporting the proposal. The ATA recommends that, in addition to allowing optional forms for the recording of time, certain information should be deleted from the forms. The items recommended for deletion were:

1. The company name and address (optional).
2. Driver's home terminal.
3. Location of intermittent change of duty status.
4. Shipping document information.
5. Off-duty time.

The Common Carrier Conference of the ATA also requested that four informational items be eliminated:

1. Driver off-duty time.
2. Location of each change of duty status.
3. On-duty driving and on-duty not driving time.
4. Carrier's home terminal address.

Many of the other commenters supporting the proposal to allow alternate forms did so with the condition that the hours of service rules continue to be strictly enforced. Some commenters, such as the National Tank Truck Carriers, Inc., urged even stricter enforcement than that which presently exists.

Opposed (to Log Elimination)

The continued use of the driver's log was supported by a large majority of commenters. Approximately 1,200

comments received were in opposition to the proposed rule change with expressed concerns focusing primarily on the potential for unnecessary confusion among law enforcement, regulatory and industry personnel. Twenty-seven State regulatory agencies from 23 States submitted comments in total support of the retention of the current driver's log, with only minor exceptions. These exceptions, which were put forth by several State agencies, indicated that trip reports may be acceptable provided the forms were uniform and the information necessary for enforcement purposes is specified to be contained therein.

The need for uniformity was a concern expressed by the States, carriers, drivers, individuals and national organizations such as the International Brotherhood of Teamsters (IBT), the Professional Drivers Council of Teamsters for a Democratic Union (PROD), and the Commercial Vehicle Safety Alliance (CVSA). The CVSA, for example, stated that the current log provides uniformity because it is universally understood by both law enforcement personnel, and the regulated industry, and is accepted by the courts. The CVSA also believes that any benefits gained by reducing the recordkeeping requirement at the Federal level would be more than offset by different or unique requirements promulgated by each of the States. It was also frequently pointed out that a multitude of dissimilar recordkeeping forms and techniques for enforcement personnel to become familiar with would be costly in terms of both time and money for enforcement agencies as well as the motor carriers. PROD, in its comments, expressed the belief that the acceptance of many forms will actually escalate enforcement costs due to the effort required in obtaining information from dissimilar forms. The PROD goes on to say that the proposal fails to promote, and would actually undermine, the objectives of the Paperwork Reduction Act. Another commenter continues along these lines by saying that the paperwork burden would only be shuffled from the carrier onto the drivers and enforcement personnel by allowing many different types of forms.

The IBT urges the FHWA to drop the entire rulemaking action based on the following rationale. It states its belief that the elimination of the log requirement will drastically weaken efforts to enforce the hours of service rules. It further states that the proposed rules would allow documentation through production and retention of a series of detached records with the possibility of lost, misplaced or

destroyed records increasing with each document created.

A motor carrier Vice President, in opposing the proposed rule change, stated "I would hope that the Federal Government would not, in this case, let the Federal regulations descend to the State level for control. I feel we would be in the same mess we are faced with on permits. Every State would have their own formula for writing the laws and enforcing them. Let us stay at the Federal level and keep one set of laws."

Responses to a survey of owner-operators conducted by the Trucker's Action Conference, Baltimore, Maryland, indicated almost total opposition to replacing the existing log book with another timekeeping record. Results of the survey show, according to the Conference, that the log is easily updated during the time a driver spends waiting for meals to be served, engine warm-up and cool-down, on coffee breaks, etc. As a result of the survey, the Conference has taken the position that the log book controversy is largely a smoke screen. "The log book," it states, "serves its purpose to a degree, which is to protect the driver and the public from abuse. It makes carriers and drivers use caution in exceeding the regulations."

Additional Comments

Several commenters requested permission to use terminal codes to indicate the points at which the driver begins and ends a tour of duty. There is no objection to a motor carrier using its own terminal codes on the driver's time records in addition to the information required on driver's records of duty status.

It has been requested that a section be included authorizing the FHWA's Associate Regional Administrator for Motor Carrier Safety to approve innovative time control systems which do not meet the requirements of the driver's duty status record. There are procedures for filing petitions for changes in the regulations (49 CFR Part 389). Any deviation from the requirements as set forth in the FMCSR must be handled through appropriate rulemaking action.

The proposed use of the recording tachograph met with a great deal of opposition. The California Highway Patrol, for example, addressed the issue in its comments by stating that the modified tachograph (when legible) would be satisfactory for after-the-fact inspections, but less than adequate for on-highway enforcement, which is considered to be of prime importance. The CVSA also commented on the problems associated with the use of

tachographs such as the variations in style and type of charts and that modifications render the charts illegible. It also pointed out that the use of such a mechanical recorder is subject to breakdown and is far from being tamper proof when unlocked and inaccessible when locked. The comments of the CVSA were endorsed by many of the States who commented. The National Conference of State Transportation Specialists presented similar arguments. It contends that the use of tachographs overlooks the fact that safety enforcement is done on the highway and not at the carrier's terminal. The enforcement by the States is for the purpose of removing the unsafe driver from the highway and is not predicated on after-the-fact investigation. Another issue in the discussion of tachographs is the fact that the admissibility of the tachograph chart as evidence in court is suspect.

Discussion

Record Format

It is conceivable that the paperwork burden will increase if the various States adopt differing recordkeeping requirements. The situation could worsen if some States refused to accept records prescribed by other States. A Federal standard is needed to regulate a diverse national industry that operates its vehicles into and through all States. The safety of the traveling public must not be compromised by weakening a national enforcement capability solely for the purpose of reducing paperwork burden.

On the other hand, the arguments presented by those commenters urging the use of alternate forms which meet the needs of each company have a great deal of merit. These commenters contend that this course of action would preserve the national hours of service enforcement capability and, at the same time, permit an easing of the paperwork burden for many carriers and drivers.

Having considered all comments, both pro and con, it has been decided that each motor carrier may use the recordkeeping form of its choice provided that the required information and the required graph grid (see illustrations in paragraph (g) of the final rule) appear on that form. The presence of a standard grid on the carrier's form will result in universal recognition of any document tendered as an official hours of service record, thus overcoming most objections to the complete elimination of a standardized form requirement. This does not preclude the continued use of the daily log or the multi-day log if a motor carrier so

chooses. All "divided record" approvals now in effect for the driver's daily log or multi-day log do not have to be resubmitted for approval if the carrier elects to use its own driver's record of duty status.

The decision to require the use of the graph grid instead of other systems tested and subsequently proposed in the NPRM is based on the convincing arguments presented by the large majority of commenters who stressed their desire for universal uniformity. While this rule offers broad relief by allowing substantial freedom of design for the recordkeeping format, the use of alternate grids cannot be justified considering the large number of commenters dramatically opposed to such a change.

Another consideration that led to this decision was the results of the test program. Even though the preliminary results indicated that the modified trip report appeared to be an acceptable alternative to the driver's log, the final report revealed some difficulties with the alternatives tested. The difficulties encountered were not insurmountable, but did lend added weight to the arguments urging a universally acceptable and recognizable duty status record.

The decision to allow the use of any form chosen by a motor carrier was based in part on the results of the test program. Those results indicated that the use of a duty status record, when incorporated into any motor carrier form, presented no serious problems for the motor carriers, drivers, or enforcement personnel involved in the test program. It is believed, after due consideration of the comments to the docket and the results of the test program, that the graph grid (used either vertically or horizontally to fit the needs of the motor carrier) will provide substantial relief without jeopardizing uniformity and thus, the enforcement capability about which a large majority of commenters expressed concern.

The tachograph was one of the alternate methods used in the test program. The test program results indicate that there are some problems associated with the tachograph similar to those mentioned above, such as the potential for mechanical breakdowns.

The arguments provided against the use of the tachographs, the potential enforcement problems associated with it, and the problems encountered in the test program are justification enough for the FHWA to no longer consider the tachograph as a viable option for recordkeeping.

Record Retention

In response to many comments requesting reduction in the retention period for logs, it has been determined that the retention time presently required of motor carriers and drivers for the logs is longer than is absolutely necessary. Safety of operations or enforcement efforts will not be adversely affected if the retention requirement is reduced from 12 months to 6 months for carriers and from 30 days to 8 days for drivers. The rule is being changed to reflect this shorter retention requirement.

Data Elements

It has also been determined that certain information currently required on the log may be unnecessary for enforcement purposes. For that reason the following items will no longer be required:

1. Total mileage today.
2. Name of co-driver.
3. Home terminal address.
4. Total hours (as found at far right edge of grid).
5. Shipping document number(s), or name of shipper and commodity.
6. Origin.
7. Destination or turnaround point.

One other change to the recordkeeping format is that of the beginning time itself. The time record may commence at any time and will record a 24-hour period of time. Presently, motor carriers are allowed to use midnight to midnight or noon to noon time bases. This rule will allow a motor carrier to commence the time base as it so chooses. However, the commencement time used must be constant within each terminal of the motor carrier's operation.

In view of the support for continuing the use of the driver's log, it is apparent that a fairly uniform method of recordkeeping is necessary to ensure continued compliance with the hours of service regulations. The FHWA's concern for such uniformity has not been compromised in this effort to reduce the regulatory burden associated with the requirement.

The alternate methods allowed herein permit motor carriers to choose between the driver's log and recordkeeping documents that are an integral part of the company's operations. Those carriers who choose to combine company information with the required graph grid and essential data elements, can now consolidate all of the information onto one piece of paper. Additionally, the information now required on the recordkeeping form has

been reduced from 16 data elements to eight. Many company reports, such as trip reports, already contain most of these data elements. These deletions are expected to reduce driver preparation time by approximately 50 percent without affecting the enforcement capability.

Burden Reduction

Based on projected costs and burden hours involved in the preparation of the driver's duty status record, combined with the filing and retention time, it is estimated that a burden reduction of 11.2 million hours and a dollar savings of \$164.1 million will result from this rulemaking action. This represents a 54.2 percent burden hour reduction in the recordkeeping requirements and a 56.0 percent reduction in associated costs.

Many company trip reports already contain most of the data items being required by the final rule and would continue to be included by the companies even if there were no Federal requirement. The preparation burden should, therefore, be further reduced to only include, in most instances, the time involved in completing the graph grid.

Alternatives

This rule provides motor carriers with five alternatives for controlling a driver's hours of service. The five alternatives are as follows:

1. Daily log (as is or modified);
2. Multi-day log (as is or modified);
3. Graph grid (vertical), combined with a company record;
4. Graph grid (horizontal), combined with a company record; or
5. Graph grid, combined with only eight required data elements.

Exemption to Record of Duty Status Preparation

The NPRM proposed to increase, from 12 consecutive hours to 15 consecutive hours, the number of hours a driver may be on duty under the present 100-mile radius driver exemption. This proposal was in response to petitions filed by PTCA, and the Continental Group, Inc., of Chicago, Illinois, in which they requested that the 50-mile radius driver exemption be restored as an option.

The petitioners contended that many drivers previously exempt from the log requirement are now required to prepare logs due to the 12-hour limitation. The petitioners pointed out that many companies engaged in such businesses as container manufacturing, merchandise packaging, home heating oil delivery, farm fertilizer delivery and retail services experience a seasonal need which clearly necessitates the 15-

hour on-duty time limit in order to reduce the paperwork burden.

Expanding the 50-mile radius driver exemption to 100 miles did create the situation described by the petitioners. The creation of such a situation was not intended. Rather than reestablish a separate 50-mile radius driver exemption, it was proposed that the current 100-mile radius driver exemption rule be revised to permit drivers to be on duty for 15 consecutive hours and not be required to prepare the driver's duty status record.

A large majority of commenters responding to the proposal supported the proposed change. Some commenters, however, such as the IBT and PROD, expressed opposition to the proposal because of the fear that drivers operating under this exemption may be required to drive in excess of the current 10-hour allowance without preparing the necessary paperwork to determine if violations were committed.

The decision to increase the on-duty time to 15 consecutive hours for drivers operating within the 100 air-mile radius of the work reporting location does not negate the 10 hour driving time rule. Under this exemption a driver may not drive more than 10 hours following 8 consecutive hours off duty, nor drive after being on duty 15 consecutive hours. While the log exemption would make violating more difficult to detect, we believe that investigative techniques will allow adequate enforcement of the regulation. If experience shows this is not the case, appropriate rulemaking action will be initiated.

Further, any time a driver leaves the exempt area, or is on duty more than 15 consecutive hours, a record of the driver's duty status must be prepared for that day by the driver. Under this provision, there is no limitation on the number of times the driver may operate beyond the 100 air-mile radius or be on duty in excess of 15 consecutive hours in a nondriving capacity.

Conforming Changes

Conforming changes are being made in § 395.2, Definitions, and § 395.13, Drivers declared out of service, to make these sections compatible with the new rule. In addition, § 395.9, Driver's multi-day log, is being rescinded because the provisions contained therein have been incorporated into the revised rule.

Another conforming change being made is the elimination of the exemption that provided for the use of Canadian forms by Canadian motor carriers operating into the United States. Since there will be no prescribed Canadian log form in the future, there is no need for an exemption. Any form

used, including forms used by Canadian motor carriers, must conform to the requirements for the driver's record of duty status issued herein. Continued use of the previously prescribed Canadian log form is allowed as is the current daily log and multi-day log.

Summary

In view of the overwhelming number of comments received urging retention of the current driver's log requirement, it is evident that rulemaking on this issue must consider the need for uniformity in recordkeeping as a critical and primary consideration. In addition, because a substantial number of commenters expressed support of the proposal, and considering the results of the test program, it is apparent that some of the burden imposed by the existing log requirement can be eliminated without jeopardizing safety of operations.

The final rule differs from the proposed rule in that it specifies that a uniform grid must be used in conjunction with any form a motor carrier uses, while at the same time permitting the continued use of the current driver's daily log or multi-day log. By doing so, uniformity has not been compromised. Further, the relaxation of this rule will allow for a substantial reduction of paperwork burden on the industry while not affecting the ability of Federal and State enforcement personnel to audit a carrier's or driver's compliance with the regulations.

Actual cost reductions were reported by several fleets that participated in the test program. Those cost savings resulted from the elimination of collecting, processing, auditing, and filing of the log as a separate document. In some cases, such advantages as improved quality and quantity of hours of service compliance auditing was achievable by taking advantage of the savings in administrative time.

This rule represents a compromise of well-stated positions, both pro and con, with the concerns of both factions having been weighed and given full and serious consideration. In addition, the test program has provided the needed evidence that the implementation of this rule does not present a safety hazard to the industry, its drivers, or the public.

In accordance with the provisions of Executive Order 12291, in promulgating this rule the FHWA has determined that (a) the rule is clearly within the authority delegated by law and consistent with congressional intent, and (b) the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public

comments in general and the comments of persons directly affected by the rule in particular.

List of Subjects in 49 CFR Part 395

Motor carriers—drivers hours of service, reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Part 395 is amended as set forth below.

PART 395—HOURS OF SERVICE OF DRIVERS

1. Amend § 395.2 by revising paragraph (c), (d) and (e) and by adding a new paragraph (j) to read as follows:

§ 395.2 Definitions.

(c) *Seven consecutive days.* The term "7 consecutive days" means the period of 7 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

(d) *Eight consecutive days.* The term "8 consecutive days" means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

(e) *Twenty-four hour period.* The term "24-hour period" means any 24 consecutive hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

(j) *Principal place of business or main office address.* The principal place of business or main office address is the geographic location designated by the motor carrier where the records required to be maintained by this part will be made available for inspection.

2. Section 395.8 is revised in its entirety to read as follows:

§ 395.8 Driver's record of duty status (Approved by the Office of Management and Budget under OMB Control number 2125-0016).

(a) Every motor carrier shall require every driver used by the motor carrier to record his/her duty status, in duplicate, for each 24-hour period. Every driver who operates a motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time shall be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company forms. The previously approved format of the Daily

Log, Form MCS-59 or the Multi-day Log, MCS-139 and MCS-139A, which meets the requirements of this paragraph, may continue to be used.

(b) The duty status shall be recorded as follows:

(1) "Off duty" or "OFF."

(2) "Sleeper berth" or "SB" (only if a sleeper berth used).

(3) "Driving" or "D."

(4) "On-duty not driving" or "ON."

(c) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

Note.—If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation, (2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or (3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(d) The following information must be included on the form in addition to the grid:

- (1) Date;
- (2) Total miles driving today;
- (3) Truck or tractor number;
- (4) Name of carrier;
- (5) Driver's signature/certification;

and

- (6) 24-hour period starting time (e.g., midnight, 9:00 a.m., noon, 3:00 p.m.); and
- (7) Main office address.

(8) Remarks.

(e) Failure to complete the record of duty activities, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities as prescribed herein shall make the driver and/or the carrier liable to prosecution.

(f) The driver's activities shall be recorded in accordance with the following provisions:

(1) *Entries to be current.* Drivers shall keep their record of duty status current to the time shown for the last change of duty status.

(2) *Entries made by driver only.* All entries relating to driver's duty status must be legible and in the driver's own handwriting.

(3) *Date.* The month, day and year for the beginning of each 24-hour period shall be shown on the form containing the driver's duty status record.

(4) *Total mileage driven.* Total mileage driven during the 24-hour period shall be recorded on the form containing the driver's duty status record.

(5) *Vehicle identification.* The carrier's vehicle number or State and license number of each truck or tractor unit operated during that 24-hour period shall be shown on the form containing the driver's duty status record.

(6) *Name of carrier.* The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's duty status record. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each carrier shall be shown after each carrier name. Drivers of leased vehicles shall show the name of the motor carrier performing the transportation.

(7) *Signature/certification.* The driver shall certify to the correctness of all entries by signing the form containing the driver's duty status record with his/her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(8) *Time base to be used.* (i) The driver's duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(ii) The term "7 or 8 consecutive days" means the 7 or 8 consecutive 24-hour periods as designated by the carrier for the driver's home terminal.

(iii) The 24-hour period starting time must be identified on the driver's duty status record. One-hour increments must appear on the graph, be identified, and preprinted. The words "Midnight" and "Noon" must appear above or beside the appropriate one-hour increment.

(9) *Main office address.* The motor carrier's main office address shall be shown on the form containing the driver's duty status record.

(10) *Recording days off duty.* Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(g) *Graph grid.* The following graph grid must be incorporated into a motor carrier recordkeeping system which must also contain the information required in paragraph (d) of this section.

BILLING CODE 4910-22-M

Graph Grid - Horizontally

OFF DUTY
SLEEPER
BERTH
DRIVING
ON DUTY
(Not Driving)

Graph Grid - Vertically

REMARKS

(h) *Graph Grid Preparation.* The graph grid may be used horizontally or vertically and shall be completed as follows:

(1) *Off duty.* Except for time spent resting in a sleeper berth, a continuous line shall be drawn between the appropriate time markers to record the period(s) of time when the driver is not on duty, is not required to be in readiness to work, or is not under any responsibility for performing work.

(2) *Sleeper berth.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time off duty resting in a sleeper berth, as defined in § 395.2(g). (If a non-sleeper berth operation, sleeper berth need not be shown on the grid.)

(3) *Driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty driving a motor vehicle, as defined in § 395.2(b).

(4) *On duty not driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty not driving specified in § 395.2(a).

(5) *Location—Remarks.* The name of the city, town, or village, with State abbreviation where each change of duty status occurs shall be recorded.

Note.—If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation, (2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or (3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(i) *Filing driver's record of duty status.* The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form:

(j) *Drivers used by more than one motor carrier.* (1) When the services of a driver are used by more than one motor carrier during any 24-hour period in effect at the driver's home terminal, the driver shall submit a copy of the record of duty status to each motor carrier. The record shall include:

(i) All duty time for the entire 24-hour period;

(ii) The name of each motor carrier served by the driver during that period; and

(iii) The beginning and finishing time, including a.m. or p.m., worked for each carrier.

(2) Motor carriers, when using a driver for the first time or intermittently, shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which the driver was last relieved from duty prior to beginning work for the motor carriers.

(k) *Retention of driver's record of duty status.* (1) Driver's records of duty status for each calendar month may be retained at the driver's home terminal until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business where they shall be retained with all supporting documents for a period of 6 months from date of receipt.

(2) *Exception.* Upon written request to, and with the approval of, the Associate Regional Administrator for

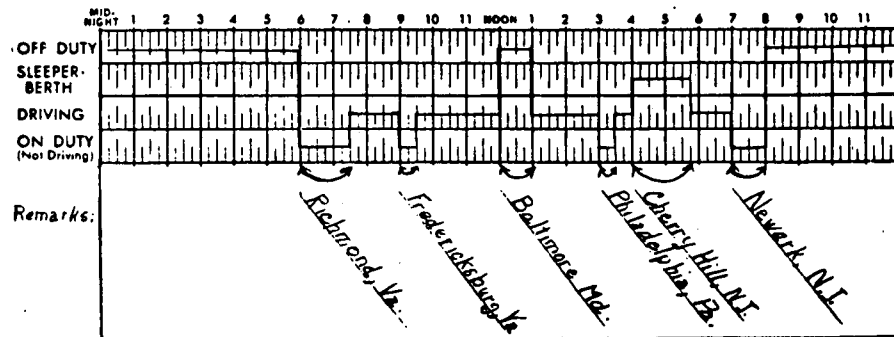
Motor Carrier Safety for the region in which the motor carrier has its principal place of business, a motor carrier may forward and maintain such records at a regional or terminal office. The addresses and jurisdictions of the Associate Regional Administrator's offices are shown in § 390.40 of this subchapter.

(3) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty.

Note.—Driver's record of duty status.

The graph grid, when incorporated as part of any form used by a motor carrier, must be of sufficient size to be legible.

The following executed specimen grid illustrates how a driver's duty status should be recorded for a trip from Richmond, Virginia, to Newark, New Jersey. The grid reflects the midnight to midnight 24 hour period.



Graph Grid (Midnight to Midnight Operation)

The driver in this instance reported for duty at the motor carrier's terminal. The driver reported for work at 6 a.m., helped load, checked with dispatch, made a pretrip inspection, and performed other duties until 7:30 a.m. when the driver began driving. At 9 a.m. the driver had a minor accident in Fredericksburg, Virginia, and spent one half hour handling details with the local police. The driver arrived at the company's Baltimore, Maryland, terminal at noon and went to lunch while minor repairs were made to the tractor. At 1 p.m. the driver resumed the trip and made a delivery in Philadelphia, Pennsylvania, between 3 p.m. and 3:30 p.m. at which time the driver started driving again. Upon arrival at Cherry Hill, New Jersey, at 4 p.m., the driver entered the sleeper berth for a rest break until 5:45 p.m. at which time the driver resumed driving again. At 7 p.m. the driver arrived at the company's terminal in Newark, New Jersey. Between 7 p.m. and 8 p.m. the driver prepared the required paperwork including completing the driver's record of duty status, vehicle condition report, insurance report for the Fredericksburg, Virginia accident, checked for the next day's dispatch, etc. At 8 p.m., the driver went off duty.

(l) *Exemptions.*—(1) 100 air-mile radius driver. A driver is exempt from the requirements of this section if:

(i) The driver operates within a 100 air-mile radius of the normal work reporting location;

(ii) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 15 consecutive hours;

(iii) The driver had 8 consecutive hours off duty prior to reporting for duty;

(iv) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty;

(v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with paragraph (i) of

this section for drivers used for the first time intermittently.

(2) *Drivers of lightweight vehicles.* The rules in this section do not apply to a driver of a lightweight vehicle as defined in § 390.17.

(3) *Drivers operating in Hawaii.* The rules in this section do not apply to a driver who drives a motor vehicle in the State of Hawaii, if the motor carrier who employs the driver maintains and retains for a period of 6 months accurate and true records showing—

(i) The total number of hours the driver is on duty each day; and

(ii) The time at which the driver reports for, and is released from, duty each day.

§ 395.9 [Removed and reserved]

3. Section 395.9 is removed and the section number is reserved.

4. Amend § 395.13 by revising paragraphs (b), (c), and (d)(1) and (2) to read as follows:

§ 395.13 Drivers declared out of service.

(b) *Out of service criteria.* (1) No driver shall drive after being on duty in excess of the maximum periods permitted by this part.

(2) No driver required to maintain a record of duty status under § 395.8 shall fail to have a record of duty status current on the day of examination and for the prior 7 consecutive days.

(3) *Exception.* A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

(c) *Responsibilities of motor carriers.*

(1) No motor carrier shall:

(i) Require or permit a driver who has been declared out of service to operate a motor vehicle until that driver may lawfully do under the rules in this part.

(ii) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a motor vehicle until that driver has been off duty for 8 consecutive hours and is in compliance with this section. The consecutive 8 hour off-duty period may include sleeper berth time.

(2) A motor carrier shall complete the "Motor Carrier Certification of Action Taken" portion of the form MCS-63 (Driver-Vehicle Examination Report) and deliver the copy of the form either personally or by mail to the Associate Regional Administrator for Motor Carrier Safety, Federal Highway Administration, at the address specified upon the form within 15 days following

the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

(d) *Responsibilities of the driver.* (1) No driver who has been declared out of service shall operate a motor vehicle until that driver may lawfully do so under the rules of this part.

(2) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a motor vehicle until the driver has been off duty for 8 consecutive hours and is in compliance with this section.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

(49 U.S.C. 304, 1653; 49 CFR 1.48 and 301.60)

Issued on: November 22, 1982.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety,
Federal Highway Administration.

[FR Doc. 82-32331 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Forty-Sixth Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Public Law 96-254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATES: 12:01 a.m., November 24, 1982, and continuing in effect until 11:59 p.m., January 31, 1983, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

SUPPLEMENTAL INFORMATION:

Decided: November 19, 1982.

Pursuant to Section 122 of the Rock Island Railroad Transition and

Employee Assistance Act, Public Law 96-254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued rail service over RI's lines pending the implementation of long-range solutions, this order permits carriers to provide service to shippers which may otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by deleting at 4.S, the authority for the Chicago and North Western Transportation Company (CNW) to operate over Peoria Terminal Trackage between Hollis and Iowa Junction, Illinois. This line segment was purchased by CNW.

Appendix A is further revised by adding at Item 26, the authority for Texas North Western Railway Company (TNW) to operate between Hardesty, Oklahoma and Liberal, Kansas, a distance of approximately 33 miles. This line connects with a line segment already purchased by TNW from Rock Island at Hardesty, Oklahoma. Appendix A is further revised by modifying the authority of the Cadillac and Lake City Railway Company (CLK) at Item 8, to reflect the terms of its lease agreement with the Trustee.

Appendix B of Forty-Third Revised Service Order No. 1473 is unchanged and is incorporated into this order by reference.

It has been brought to the attention of the Board that, in certain cases, payment of compensation to the Trustee for the use of Rock Island property is in arrears. All interim operators are reminded that compensation, whether determined by lease, agreement, or the Rock Island Formula, is a requirement of this order and should remain current.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the named appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

PART 1033—[AMENDED]

It is ordered,

§ 1033.1473 Service Order No. 1473.

(a) *Various railroads authorized to use tracks and/or facilities of the*

Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee). Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96-254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(1) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties

or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., November 24, 1982.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1983, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Public Law 96-254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C.,

and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,
Secretary.

Appendix A.—RI Lines Authorized To Be Operated by Interim Operators

1. Peoria and Pekin Union Railway Company (PPU):

A. All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois.

B. Mossville, Illinois (milepost 148.23) to Peoria, Illinois (milepost 161.0) including the Keller Branch (milepost 1.55 to 6.15).

2. Union Pacific Railroad Company (UP):

A. Beatrice, Nebraska.

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska.

3. Toledo, Peoria and Western Railroad Company (TPW):

A. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.

*4. Chicago and North Western Transportation Company (CNW):

A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri.

B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0).

C. from Inver Grove (milepost 344.7) to Northwood, Minnesota.

D. from Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6).

E. from East Des Moines, Iowa (milepost 350.8) to West Des Moines, Iowa (milepost 364.34).

F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7).

G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0).

H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).

I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).

J. from Iowa Falls (milepost 97.4) to Estherville, Iowa (milepost 208.9).

K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7).

L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502).

M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2).

N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids.

O. at Sibley, Iowa.

P. at Hartley, Iowa.

Q. from Carlisle to Indianola, Iowa.

R. at Omaha, Nebraska (between milepost 502 to milepost 504).

5. Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):

A. from Newport, Minnesota to a point near the east bank of the Mississippi River.

sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

B. from Davenport (milepost 182.35) to Iowa City, Iowa (milepost 237.01).

6. *Missouri Pacific Railroad Company (MP)*:

A. from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5).

B. from Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0).

C. from Hot Springs Junction (milepost 0.0) to and including Rock Island (milepost 4.7).

7. *Norfolk and Western Railway Company (NW)*: is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

*8. *Cadillac and Lake City Railway Company (CLK)*:

A. from Poplar Street (milepost 0.76) to and including junction with DRGW Belt Line (milepost 3.99) all in the vicinity of Denver, Colorado.

B. from Colorado Springs (milepost 608.93) to Caruso, Kansas (milepost 430.0) a distance of 178.93 miles.

C. over-head rights from Caruso, Kansas (milepost 430.0) to Colby, Kansas (milepost 387.0), a distance of approximately 43 miles, in order to effect interchange with the Union Pacific Railroad.

9. *Baltimore and Ohio Railroad Company (BO)*:

A. from Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.

B. from Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.

10. *Keota Washington Transportation Company (KWTR)*:

A. from Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

B. at Vinton, Iowa (milepost 120.0 to 123.0).

C. from Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

11. *The La Salle and Bureau County Railroad Company (LSBC)*:

A. from Chicago (milepost 0.60) to Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.

B. from Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island, Illinois.

C. from Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.

D. from Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights and to effect interchange at the Kensington and Eastern Yard.

12. *The Atchison, Topeka and Santa Fe Railway Company (ATSF)*:

A. at Alva, Oklahoma.

B. at St. Joseph, Missouri.

13. *The Brandon Corporation (BRAN)*:

A. from Clay Center, Kansas (milepost 178.37), to Manhattan, Kansas (milepost 143.0), a distance of approximately 35 miles.

14. *Iowa Northern Railroad Company (IANR)*:

A. from Cedar Rapids, Iowa (milepost 100.5), to Manly, Iowa (milepost 225.1).

B. at Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.

15. *Iowa Railroad Company (IRRC)*:

A. from Council Bluffs (milepost 490.15) to West Des Moines, Iowa (milepost 364.34) a distance of approximately 126.81 miles.

B. from Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1), a distance of approximately 24.4 miles.

C. from Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3), a distance of approximately 5.9 miles.

D. Overhead rights from West Des Moines, Iowa (milepost 364.34) to East Des Moines, Iowa (milepost 350.8). (This trackage is currently leased to the CNW, see Item 5.E.)

E. from East Des Moines, Iowa (milepost 350.8) to Iowa City, Iowa (milepost 237.01), a distance of 113.79 miles.

F. Overhead rights from Iowa City, Iowa (milepost 237.01) to Davenport, Iowa (milepost 182.35), including interchange with the Cedar Rapids and Iowa City Railway. (This trackage is currently leased to the MILW, see Item 6.D.)

G. from Bureau, Illinois (milepost 114.2) to Davenport, Iowa (milepost 182.35).

H. from Rock Island, Illinois through Milan, Illinois, to a point west of Milan sufficient to serve the Rock Island Industrial Complex.

I. at Rock Island, Illinois including 26th Street Yard.

J. from Altoona to Pella, Iowa.

16. *Missouri-Kansas-Texas Railroad Company (MKT)*:

A. from Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.

17. *Chicago Short Line Railway Company (CSL)*:

A. from Pullman Junction easterly for approximately 1000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.

B. from Rock Island Junction westerly for approximately 3000 feet to Irondale Wye.

18. *Kyle Railroad Company (Kyle)*:

A. from Belleville (milepost 187.0) to Caruso, Kansas (milepost 430.0), a distance of approximately 243 miles, KYLE will be responsible for the maintenance of the jointly used track between Colby and Caruso as mutually agreed upon with CLK, and for coordinating operations.

B. from Belleville (milepost 187.0) to Mahaska, Kansas (milepost 170.0), a distance of approximately 17 miles.

C. from Belleville (milepost 225.34) to Clay Center, Kansas (milepost 178.37), a distance of approximately 47 miles.

19. *North Central Oklahoma Railway, Inc. (NCOK)*:

A. from Mangum, Oklahoma (milepost 97.2) to Anadarko, Oklahoma (milepost 18.14).

B. from El Reno, Oklahoma (milepost 515.0) to Hydro, Oklahoma (milepost 553.0) a distance of approximately 38 miles.

C. from Geary, Oklahoma (milepost 0.0) to Okeene, Oklahoma (milepost 39.0) a distance of approximately 39 miles.

20. *South Central Arkansas Railway, Inc. (SCAR)*:

A. from El Dorado, Arkansas (milepost 99) to Ruston, Louisiana (milepost 154.77).

21. *Burlington Northern Railroad Company (BN)*:

A. at Burlington, Iowa (milepost 0 to milepost 2.06).

B. at Okeene, Oklahoma.

22. *Fort Worth and Denver Railway Company (FWD)*:

A. from Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.

B. at North Fort Worth, Texas (mileposts 603.0 to 611.4).

23. *Omaha, Lincoln and Beatrice Railway Company (OLB)*:

A. at Lincoln, Nebraska (milepost 559.16) to (milepost 560.83).

Note.—In the interest of operational clarity and efficiency, and considering OLB's lease with the Trustee, OLB will be the supervising carrier for operations and maintenance for the above segment to be operated jointly with COE.

24. *Colorado and Eastern Railway Company (COE)*:

A. at Lincoln, Nebraska (milepost 558.0) to (milepost 562.0) a distance of approximately 4.0 miles. (This authority is joint with OLB between mileposts 559.16 and 560.83, see Item 27, Note).

25. *Enid Central Railway Company, Inc. (ENIC)*:

A. from North Enid, Oklahoma (milepost 0.12) to Ponca City, Oklahoma (milepost 54.8).

†26. *Texas North Western Railway Company (TNW)*:

A. from Hardesty, Oklahoma (milepost 119.20) to Liberal, Kansas (milepost 152.35) a distance of approximately 33.15 miles.

* Changed.

† Added.

[FR Doc. 82-32341 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 47, No. 228

Friday, November 26, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1136

[Docket No. AO-309-A24]

Milk in Great Basin Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Great Basin Federal milk order that have been proposed by a proprietary handler. The proponent contends that the changes are necessary to accommodate the operations of a new plant located in the marketing area that will process and distribute only ultra high temperature pasteurized milk (UHT milk). One proposal would amend the pool plant definition so that a plant located in the marketing area that processes and distributes only ultra high temperature (UHT) pasteurized milk would be a pool plant under the Great Basin order even though it may have greater sales in other marketing areas.

A second proposal would allow a plant that is exempt from pooling to have milk custom-packaged at a pooled UHT plant and returned to the exempt plant to be used for charitable purposes without the exempt plant losing its exempt status. A third proposal would exclude from the fluid milk definition formulas especially prepared for infant feeding or dietary use that are packaged as UHT products.

DATE: A hearing will be held on December 9, 1982.

ADDRESS: Airport Rodeway Inn, 2080 West North Temple Avenue, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Airport Rodeway Inn, 2080 West North Temple Ave., Salt Lake City, Utah 84116 beginning at 9:30 a.m. on December 9, 1982, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Great Basin marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposal No. 1.

Beginning January 1, 1981, actions under the Federal milk order program became subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the

probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of the proposal for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1136

Milk marketing orders, Milk, Dairy products.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Gossner Foods, Inc.

Proposal No. 1

In § 1136.7, redesignate the present paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

§ 1136.7 Pool plant.

* * * * *

(c) A fluid milk plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant has route disposition, except filled milk, during any month of September through February of not less than 50 percent, during any month of March and April of not less than 45 percent and during any month of May through August of not less than 40 percent, of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class III under this order and which is subject to the pricing and pooling provisions of another order issued pursuant to the Act) or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13, and

(3) The principal activity of such plant is the processing and distribution of aseptically processed fluid milk products.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant; and

(3) Any plant described in paragraph (d)(3) (i) or (ii) of this section shall be exempt from paragraph (a) or (b) of this section, unless the Secretary determines otherwise, if it would be fully regulated subject to the classification and pooling provisions of another order issued

pursuant to the Act if not so subject to this part:

(i) Any plant from which there is less route disposition, except filled milk, in the Great Basin marketing area than in the marketing area regulated pursuant to such other order if not so subject to this part; or

(ii) Any plant during the months of February through July which qualifies as a pool plant only pursuant to the proviso of paragraph (b) of this section.

Proposal No. 2

Revise § 1136.8(e) to read as follows:

§ 1136.8 Nonpool plant.

(e) "Exempt plant" means a governmental agency, Brigham Young University or any approved plant from which the total route disposition is to individuals or institutions for charitable purposes and is without remunerations from such individuals or institutions including diversion by such exempt plant of part of its normal milk supply to a plant for aseptic processing, under a processing contract, and returned to the exempt plant after processing for use for the above stated purposes.

Add a new § 1136.12(b)(4) to read as follows:

§ 1136.12 Producer

(b) ***

(4) Any person with respect to milk produced by him for supply to an exempt plant.

Proposal No. 3

Revise § 1136.15(b)(1) to read as follows:

§ 1136.15 Fluid milk product.

(b) ***

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

**Proposed by the Dairy Division,
Agricultural Marketing Service**

Proposal No. 4

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the market administrator, B. J. Deaver, P.O.

Box 440860, Aurora, Colorado 80044 or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

From the time a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Washington Office only).
Office of the Market Administrator, Great Basin marketing area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on November 19, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-32478 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1982-9]

Trade Association Solicitation Authorization

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission requests comments on proposed rules revising the solicitation authorization which a trade association must obtain prior to soliciting the corporate members' stockholders and executives and administrative personnel as presently required at 11 CFR 114.8(c) and (d). The revision would cause a solicitation authorization to be valid through the calendar year for which it is designated by the corporation and would delete the present requirement that a separate authorization must be obtained in the calendar year during which the trade association is to solicit.

DATES: Comments must be received on or before December 30, 1982.

ADDRESS: Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT:

Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: During the Commission's discussion of Advisory Opinion 1982-54, the issue was raised as to whether or not 2 U.S.C. 441b(b)(4)(D) requires a trade association to obtain the requisite solicitation authorization from their corporate members in the same year for which it is to be applicable, or may it be obtained prior to that designated calendar year? A similar question regarding this issue was raised at a subsequent meeting when the revisions to 11 CFR 114.3 and 114.4 were being considered by the Commission.

As a result of the questions posed at those meetings, the Commission is requesting comments on proposed revisions to the rules which govern the time when the solicitation authorization must be issued by the corporate member and received by the trade association. The proposed rules would change the present rules and would permit a corporation to grant the authorization and the trade association to receive the authorization prior to the calendar year for which it is designated. The Commission seeks comments regarding the effects of such changes.

The Commission notes that this proposed revision is intended to address a specific aspect of Section 114.8. While there may be other issues that could be raised with respect to the section, it is the Commission's intention to limit this proposed rulemaking to the single issue covered.

List of Subjects in 11 CFR Part 114

Business and industry, Elections.

PART 114—[AMENDED]

It is proposed to amend 11 CFR 114.8 by revising (c)(2) and (d)(4) to read as follows:

§ 114.8 Trade associations.

(c) ***

(2) The member corporation has not approved a solicitation by any other trade association for the same calendar year.

(d) ***

(4) A separate authorization specifically allowing a trade association to solicit its corporate member's stockholders, and executive or administrative personnel applies through the calendar year for which it is

designated. A separate authorization by the corporate member must be designated for each year during which the solicitation is to occur. This authorization may be requested or received prior to the calendar year in which the solicitation is to occur.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that no entity is required to make any expenditures under the proposed rules.

Dated: November 19, 1982.

Danny L. McDonald,
Vice Chairman, Federal Election Commission.

[FR Doc. 82-32287 Filed 11-24-82; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 23401, Notice No. SC-82-4-CE]

Special Conditions; New Zealand Aerospace Industries, Ltd., Model Cresco Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes Special Conditions for the Aerospace Industries, Ltd. Model Cresco airplane. The airplane will have novel or unusual design features associated with a turbo propeller installation on a single-engine airplane for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the Model Cresco airplane.

DATES: Comments must be received by January 2, 1983.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 23401, Room 1558, 601 E. 12th Street, Kansas City, MO 64108. All comments must be marked: Docket No. 23401.

Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Regulations and Policy Office, Room 1656, Federal Office Building, 601 E. 12th Street, Kansas City, MO 64108, Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for documents specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after the closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. The certification basis for the Aerospace Industries, Ltd. Model Cresco airplane is as follows: Part 23 of the FAR, effective February 1, 1965 through Amendment 23-23, effective December 1, 1978; Part 36 of the FAR, effective December 1, 1969 through Amendment 36-9; SFAR 27, effective February 1, 1974 through Amendment 27-3; and any other Special Conditions which may result from this proposal.

Special Conditions may be issued, and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features. Special Conditions, as appropriate, are issued in accordance with §§ 21.16 and 21.101(b)(2), and become part of the type certification basis in accordance with § 21.17(a)(2).

Background

On May 29, 1978, New Zealand Aerospace Industries, Ltd. (NZAI) filed an application for a U.S. type certificate for its Model Cresco airplane under

§ 21.29 of the Federal Aviation Regulations (FAR) in accordance with the airworthiness requirements of Part 23 of the FAR. Since the type certificate was not issued within the three-year time limit set by FAR 21.17(b), the applicant requested an extension to the original application under § 21.17(c)(2) of the FAR and recommended December 18, 1979, as the new date of effectivity for applicable airworthiness requirements. The Honolulu Aircraft Certification Field Office granted the time extension. The New Zealand Civil Aviation Division (CAD) was advised that the certification basis will be revised to reflect additional FAR 23 requirements.

The Model Cresco is a small single engine airplane of conventional metal construction with maximum weights of 6,450 pounds (normal) and 7,000 pounds (agricultural use). It is powered by an Avco Lycoming LTPO 101 turbine engine rated at 600 shp and equipped with an Hartzell three-bladed propeller. The turbopropeller engine is mounted on a long mount forward of the fuselage. While dynamic loads imposed on aircraft structure by such turbopropeller installations were considered when the regulations were promulgated in 1969 (Amendment 23-7), single engine installations were not envisioned.

The Special Conditions contain the standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Safety.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administrator proposes the following Special Conditions for the Aerospace Industries, Ltd., Model Cresco airplane.

Dynamic Evaluation, Engine Installation

In addition to the requirements in § 23.629 of the FAR, the dynamic evaluation of the airplane must include:

1. Whirlmode degree of freedom which takes into account the stability of the plane of rotation of the propeller and significant elastic, inertial, and aerodynamic forces, and
2. Engine-propeller-engine mount stiffness and damping variations appropriate to the particular configuration.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1423); Sec. 6(c), Department of

Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.28 and 11.29(b))

Issued in Kansas City, MO, on November 15, 1982.

Murray E. Smith,
Director, Central Region.

[FR Doc. 82-32324 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33-6435; 34-19245; IC-12824]

Purchases of Equity Securities by Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Securities and Exchange Commission is withdrawing a proposed rule that would have regulated issuer repurchases of its common and preferred stock by imposing limitations on the time, price and volume of such purchases and the number of brokers and dealers that could be used to effect such purchases. The Commission has determined that mandatory regulation of such transaction is not necessary.

DATE: November 17, 1982.

FOR FURTHER INFORMATION CONTACT:

John B. Manning, Jr., Esq. [202-272-2874] or Mary Chamberlin, Esq. [202-272-2848], Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the withdrawal of proposed Rule 13e-2 under the Securities Exchange Act of 1934 ("Act"). The rule would have regulated purchases by an issuer and certain related persons of the issuer's common and preferred stock. Rule 13e-2 most recently was published for comment in 1980.¹

Rule 13e-2 would have imposed restrictions on issuer repurchases intended to prevent market manipulation. These restrictions would have limited the time, price and volume of such purchases and the number of brokers or dealers that could be used on a single day to solicit purchases. It also would have imposed specific disclosure

requirements in connection with issuer repurchase programs.

The Commission has determined that mandatory regulation of such transactions is not necessary, and, accordingly, has withdrawn proposed Rule 13e-2. In light of the possible application of the anti-manipulative prohibitions in Sections 9(a)(2) and 10(b) of the Act (and Rule 10b-5 thereunder) to an issuer's purchases of its securities, the Commission has, however, adopted today in a separate release on optional "safe harbor" with respect to such transactions.² Under new Rule 10b-18, the issuer and certain persons related to the issuer will not incur liability under the anti-manipulative provisions of the Act if purchases are effected in accordance with the limitations contained in the safe harbor.

These conditions are substantially similar to the restrictions proposed in Rule 13e-2 which would have been imposed on a mandatory basis. The Commission also has adopted amendments to Rule 10b-6 which eliminate the Commission's current program of regulating issuer repurchases under that rule.³

By the Commission.

George A. Fitzsimmons,
Secretary.

November 17, 1982.

[FR Doc. 82-32364 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-19246 File No. S7-952]

Application of Rule 13e-4 to a Certain Type of Issuer Tender Offer

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comments.

SUMMARY: The Commission is proposing for adoption amendments to Rule 13e-4 under the Securities Exchange Act of 1934, which regulates cash tender offers and exchange offers by issuers for their equity securities. The amendments would except from the application of the Rule tender offers by issuers to purchase shares from their security holders who own a specified number of shares that is less than one hundred. The Commission is of the view that these tender offers generally do not present the potential for fraud or manipulative abuse addressed by the Rule.

²Release NOs. 33-6434, 34-19244, IC-12823 (November 17, 1982).

³Id.

DATE: Comments must be received on or before January 17, 1983.

ADDRESSES: Interested persons should submit three copies of their comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 6184, 450 Fifth Street, N.W., Washington, D.C. 20549 and should refer to File No. S7-952. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

John B. Manning, Jr. (202-272-2874); Kenneth B. Orenbach (202-272-7391) or Allyn C. Shephard (202-272-2828), Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

In August 1979, the Commission adopted Rule 13e-4 (the "Rule") and related Schedule 13E-4, which regulate cash tender offers and exchange offers by issuers for their equity securities.¹ The Rule and Schedule are patterned substantially on the regulatory scheme established by Sections 14(d) and 14(e) of the Securities Exchange Act of 1934 (the "Act") and the rules promulgated thereunder relating to third party tender offers.²

One type of issuer tender offer is an offer to purchase that is limited to security holders who own a specified number of shares that is less than one hundred ("Odd-lot Offers"). Generally, the purpose of an Odd-lot Offer is to reduce the high cost to the issuer of servicing disproportionately large numbers of small shareholder accounts and to enable the shareholders to dispose of their securities without incurring high brokerage fees. Because the savings realized from such offers also benefit the issuer's remaining shareholders, the Commission is of the view that Odd-lot Offers do not unreasonably discriminate among an issuer's security holders.³ Such offers

¹ See Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49406 ("Adopting Release"). The Rule was proposed for public comment in Securities Exchange Act Release No. 14234 (December 8, 1977), 42 FR 63066.

² See Rules 14d-1 through 14d-9 and 14e-1 through 14e-3, 17 CFR 240.14d-1-14d-9 and 240.14e-1-14e-3.

³ As proposed, paragraphs (b)(4) and (b)(7) of the Rule would have expressly permitted issuers to make tender offers limited to odd-lot holders and to base the consideration to be paid to such holders on a uniform formula. These provisions, however, were not adopted. See Adopting Release at 44 FR 49408.

¹ Securities Exchange Act Release No. 17222 (October 17, 1980), 45 FR 70890 (1980). The rule previously was published for comment in 1970 and in 1973. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (1970) and 10539 (December 6, 1973), 38 FR 34341 (1973).

usually are priced on a formula basis⁴ or are made at a small premium above the market price. In light of their limited purpose and the fact that they are not characterized by large premiums or significant market impact, the majority of Odd-lot Offers present minimal potential for fraud and manipulation.

Before the Rule was adopted, certain issuer tender offers, including Odd-lot Offers, were regulated indirectly pursuant to Rule 10b-6 under the Act.⁵ Under the Rule, the Commission initially declined to grant exemptions to permit issuers to make such offers without complying with all of the Rule's provisions, in order to gain experience with the operation of the Rule and to evaluate its impact on Odd-lot Offers. Many issuers took exception to that position, stating that the costs associated with preparing and filing a Schedule 13E-4⁶ and disseminating the required information to holders of odd-lots outweighed the economic benefits to be gained from reducing their small shareholder accounts. Consequently, they indicated, compliance with all provisions of the Rule rendered Odd-lot Offers economically unfeasible. In light of these concerns, the Commission subsequently modified its position and began to exempt Odd-lot Offers from the filing and dissemination requirements of the Rule.⁷

⁴ E.g., the market price of the subject security on the day on which shares are tendered to or received by the issuer.

⁵ Rule 10b-6, 17 CFR 240.10b-6, is an anti-manipulative rule that, among other things, prohibits any participant in a distribution of securities from bidding for or purchasing the securities which are the subject of the distribution, or any "right to purchase" such securities, until such person has completed his participation in the distribution. An issuer has historically been deemed to be engaged in a distribution of a security for purposes of Rule 10b-6 if the issuer has outstanding securities which are immediately convertible into or exchangeable for that security.

If the issuer was deemed to be engaged in a "technical" distribution of the securities for which a tender offer was to be made, it was required to obtain an exemption from the provisions of Rule 10b-6 prior to commencing its offer. An exemption from that Rule was routinely granted to permit an issuer to make such a tender offer, provided that the issuer complied with certain terms and conditions that were substantially similar to the requirements of Sections 14(d)(5)-(7) of the Act applicable to third party tender offers. See, e.g., *Cummins Engine Company, Inc.* (July 10, 1969); *Central Securities Corporation* (September 29, 1978); *Bobby Brooks, Inc.* (October 11, 1978); and *Tandy Corporation* (June 29, 1979).

The Commission has issued a release announcing the adoption of an amendment to Rule 10b-6 that will eliminate the applicability of the Rule during "technical distributions". See Release Nos. 33-6434, 34-19244, IC-12823 (November 17, 1982).

⁶ This Schedule requires an issuer making a tender offer to disclose certain information about itself and its securities and the purpose of the offer.

⁷ Paragraph (c) of the Rule requires that the issuer making a tender offer file with the Commission ten

Although exemptions from the Rule regularly are granted to permit issuers to make Odd-lot Offers without complying with the filing and dissemination requirements of the Rule,⁸ the Commission in the majority of cases had continued to require that such offers comply with the substantive provisions of the Rule.⁹ These provisions, contained generally in paragraph (f), require an issuer, among other things, to leave a tender offer open for a minimum period of time;¹⁰ to grant to tendering security holders certain withdrawal rights;¹¹ to pay any increase in consideration to holders whose securities have already been accepted for payment;¹² and to refrain from purchasing the security that is the subject of the tender offer and

copies of a Schedule 13E-4 in connection with its offer, while paragraph (d)(1)(iv) requires dissemination to all eligible participants of the information contained in the Schedule or a fair and adequate summary thereof. The first exemption from these provisions of the Rule was granted in *Allen Organ Company* (March 28, 1980).

To ensure that the potential for fraud or manipulation remained slight, exemptions from the Rule initially were limited to situations in which odd-lot holders of record owned two percent or less of the outstanding shares of the subject security. See, e.g., *James Dole Corporation* (April 7, 1980); *Dresser Industries, Inc.* (August 1, 1980); and *Hawaiian Airlines, Inc.* (September 9, 1980). This position later was modified to permit Odd-lot Offers to be made regardless of the amount of securities held by odd-lot holders, on the condition that no more than five percent of the outstanding shares of the subject security was accepted for payment by the issuer pursuant to the Odd-lot Offer. See, e.g., *Guaranty Corporation* (October 30, 1980); *Reichhold Chemicals, Inc.* (December 28, 1980); and *Nobility Homes, Inc.* (June 30, 1981). The Commission has continued to grant exemptions from the Rule subject to this five percent limitation.

⁸ In addition to a five percent limit on the number of shares to be purchased, the staff has required that an issuer making an Odd-lot Offer exempted from the Rule disseminate to shareholders a letter containing the following information:

- a. The terms and purpose of the Odd-lot Offer;
- b. instructions for obtaining, at the issuer's expense, the information required by paragraph (d)(1)(iv) of the Rule; and
- c. a letter of transmittal pursuant to which odd-lot holders may tender their securities.

⁹ Under certain circumstances involving out-of-the ordinary transactions, the Commission has on occasion granted exemptions from provisions of the Rule other than paragraphs (c) and (d)(1)(iv). See, e.g., *United Standard and Asset Growth Corporation* (July 9, 1981) (exemption from paragraph (f)(3) of the Rule to permit acceptance of odd-lots in order of size, from the smallest to the largest); *Madison Fund, Inc.* (November 3, 1980) (Odd-lot Offer made to record holders only); *American Heritage Life Investment Corporation* (September 25, 1980) (participants in issuer's employee stock purchase plan not eligible to participate in Odd-lot Offer); and *Nicor, Inc.* (November 14, 1980) (exemption from paragraph (f)(6) of the Rule to permit a trustee of an employee plan to purchase the subject security during the ten business days after termination of two concurrent Odd-lot Offers).

¹⁰ 17 CFR 240.13e-4 (f)(1).

¹¹ 17 CFR 240.13e-4 (f)(2).

¹² 17 CFR 240.13e-4 (f)(4).

certain related securities for ten business days after termination of the tender offer.¹³ The Commission has required compliance with these substantive provisions in order to ensure that Odd-lot Offers are conducted in a manner free of any deceptive, manipulative or fraudulent acts and practices.¹⁴ In addition, Odd-lot Offers are subject to the general antifraud and anti-manipulative provisions of the federal securities laws.¹⁵

II. The Proposed Amendment

The Commission has granted exemptions from paragraphs (c) and (d)(1)(iv) of the Rule with respect to approximately 85 Odd-lot Offers during the past 31 months. In light of its experience in regulating Odd-lot Offers under both Rules 10b-6 and 13e-4 and the lack of abusive practices it has found in connection with such offers, the Commission has determined to propose an amendment to the Rule that would except from its scope all Odd-lot Offers made to record and beneficial holders of odd-lots as of a specified date prior to the announcement of the offer. The Rule as amended would permit issuers to make Odd-lot Offers under the above conditions without complying with the filing and the disclosure requirements and substantive provisions of the Rule.¹⁶ By amending the Rule to except the majority of Odd-lot Offers from its scope, the Commission seeks to save issuers the expense and time associated with preparing the filing requests for exemptions from the Rule in connection with such offers, as well as to conserve the Commission's staff time and resources.

Rule 13e-4 addresses issues and potential abuses that normally are

¹³ 17 CFR 240.13e-4 (f)(6).

¹⁴ The requirement that issuer tender offers be free of such acts and practices is contained in paragraph (b) of the Rule. 17 CFR 240.13e-4(b).

¹⁵ Sections 9(a), 10(b) and 14(e) of the Act and Section 17(a) of the Securities Act of 1933 all prohibit the use of manipulative or deceptive acts or contrivances in connection with various securities transactions.

¹⁶ An Odd-lot Offer that is not made to beneficial as well as to record holders of the odd-lots subject to the offer or that does not use a record date for determining an odd-lot holder's eligibility to participate in the offer would remain subject to all the provisions of the Rule. Similarly, in the event an Odd-lot Offer is followed by an issuer tender offer, the Odd-lot Offer might be deemed to be part of the issuer tender offer and the requirements of the Rule, including the best price provisions embodied in paragraph (f)(4), might be applicable. The proposed amendments to the Rule would not affect the application of Section 23(c) of the Investment Company Act of 1940 and Rule 23c-1 promulgated thereunder, 17 CFR 270.23c-1, to closed-end investment companies that purchase for cash any securities of which they are the issuer.

inapplicable in the context of Odd-lot Offers. The primary incentive to tender into an Odd-lot Offer appears to be the cost savings realized by odd-lot holders who are able to dispose of their securities without paying the high brokerage fees generally charged for odd-lot transactions. The specific information concerning the issuer required to be disclosed by the Rule ¹⁷ therefore is of less consequence to a security holder's decision to tender into an Odd-lot Offer than it is in the context of a general issuer tender offer. Consequently, it appears to be unnecessary to impose on such offers the mandatory disclosure provisions of the Rule.¹⁸

Odd-lot Offers do not occur in contested situations and therefore do not exert pressure on security holders to act in haste. Because Odd-lot Offers are not used by issuers as a defensive tactic in response to third party tender offers and are unlikely to trigger a competing tender offer for the issuer's securities, there is little reason for odd-lot holders to withdraw securities previously tendered. Nor do odd-lot holders who participate in such offers generally tender their securities within the mandatory withdrawal period provided by the Rule.¹⁹ Accordingly, there is no apparent purpose to be served by providing withdrawal rights in connection with an Odd-lot Offer.²⁰

In addition, because the Commission understands that many odd-lot holders fail to tender their securities, Odd-lot Offers are seldom fully successful in eliminating the targeted small shareholder accounts. Hence, issuers may be expected to keep such offers open for an extended period. It is therefore unnecessary for the Commission by means of the Rule to require a minimum duration for an Odd-lot Offer or to specify acceptance procedures in the extremely unlikely event that a given offer both limits the number of shares to be accepted and is

oversubscribed.²¹ Finally, although the proposed amendment would except an issuer making an Odd-lot Offer from compliance with the provisions of the Rule, such issuer would remain fully subject to the general antifraud and anti-manipulative sections of the federal securities laws.²²

In the small number of situations in which an issuer has a significant percentage of its securities held by odd-lot holders, or in which a given Odd-lot Offer is one of the series of steps that, in the aggregate, may result in the issuer "going private," an Odd-lot offer may constitute a transaction subject to Rule 13e-3 under the Act.²³ To the extent that such an offer constitutes a "Rule 13e-3 transaction," it will, of course, continue to be subject to the filing, disclosure and dissemination requirements of Rule 13e-3.²⁴ The significant regulatory concerns raised by such "going private transactions," however, are not those at which Rule 13e-4 is directed.

Although the proposed amendment to the Rule would except Odd-lot Offers from its substantive provisions, the Commission would retain certain important conditions that have been applied to such offers pursuant to the exemptive process. First, in order to be excepted from the Rule, the offer would have to be extended to both record and beneficial holders of odd-lots of the

subject security. This requirement is consistent with the Commission's general practice in connection with tender offers to prevent unreasonable discrimination among holders of the class of security subject to the offer. Indeed, commentators on the Rule as originally proposed presented no persuasive justification for permitting beneficial holders to be excluded from Odd-lot Offers and the Commission in regulating such offers generally has required that beneficial holders of odd-lot be eligible to participate. Furthermore, the Commission has found that the cost to issuers of maintaining accounts of beneficial holders is greater than the costs associated with record holders accounts.²⁵ Since a primary purpose of Odd-lot offers is to reduce the cost of maintaining small shareholders accounts, it is therefore to the advantage of issuers and their shareholders, as well as consonant with the Commission's approach to tender offers in general, for those offers to be extended to beneficial holders of Odd-lots as well as to record holders. The proposed amendment would codify this current requirement.

In addition, the Commission would require that issuers making odd-lot Offers excepted from the Rule set a record date for the purpose of determining the eligibility of a security holder to participate in the offer. One purpose of this provision is to prevent a holder of a number of securities in excess of the specific odd-lot sought in the offer from breaking down those holdings into two or more eligible odd-lots and tendering them pursuant to the Odd-lot offer.²⁶ Acceptance of those shares pursuant to the Odd-lot Offer would result in added cost to the issuer without the realization of the corresponding benefit of reducing the outstanding number of its small accounts. Odd-lot holders also could be disadvantaged if such behavior were to result in an over-subscription of the Odd-lot Offer, causing bona fide old-lot

²¹ The Commission is therefore proposing an amendment to paragraph (f)(3)(i) of the Rule to delete reference to acceptance procedures in connection with an Odd-lot Offer.

²² See note 15, *supra*.

²³ 17 CFR 240.13e-3.

²⁴ See Rule 13e-3(e) and (f), 17 CFR 240.13e-(e) and (f). Paragraph (f)(1) of Rule 13e-3 states that the information required to be disclosed to security holders pursuant to paragraph (e) of that rule must be provided to such holders no later than 20 days before the commencement of any purchases that would result in a "13e-3 transaction." Paragraph (f)(2) excepts from this 20 day pre-purchase dissemination requirement any tender offer subject to Regulation 14D (§ 240.14d-1 to 240.14d-101) or to the Rule by providing that the means of disseminating those offers shall be governed by the respective rules.

By excepting Odd-lot Offers from the Rule, an Odd-lot Offer that is also a "13e-3 transaction" would become subject to the 20 day pre-purchase dissemination requirement of Rule 13e-3(f)(1). Commentators are requested to consider whether it is appropriate to subject Odd-lot Offers that are "13e-3 transactions" to that provision. If such a period is considered inappropriate in connection with an Odd-lot Offer, commentators should consider whether to resolve the issue by adding a provision to the proposed amendment to Rule 13e-4 requiring that Odd-lot offers that are also "Rule 13e-3 transactions" be disseminated in compliance with paragraph (e) of the Rule or by making a technical amendment to paragraph (f)(2) of Rule 13e-3 to clarify that an Off-lot Offer specifically excepted from the Rule would also be excepted from the pre-purchase dissemination provision of paragraph (f)(1), provided that it is disseminated in compliance with paragraph (e) of Rule 13e-4, as if it were fully subject thereto.

¹⁷ See 17 CFR 240.13e-4(d).

¹⁸ In light of an issuer's affirmative duty under the Act and various rules promulgated thereunder to disclose material information to its shareholders, as well as its own interest in the success of an Odd-lot Offer, the Commission expects that each issuer making an Odd-lot Offer would continue voluntarily to include disclosure provisions similar to those currently imposed by the staff pursuant to the exemptive process.

¹⁹ Paragraph (f)(2)(i) of the Rule requires that withdrawal rights be granted "until the expiration of ten business days from the commencement of the issuer tender offer." 17 CFR 240.13e-4(f)(2)(i).

²⁰ Issuers have stated to the Commission that the necessity to provide withdrawal rights may increase the administrative costs associated with making an Odd-lot Offer, which is counter-productive to their purpose in making such offers.

²⁵ Among 71 issuers transmitting proxy materials to their shareholders, the Commission found that the annual cost of sending such materials directly to record holders ranged from \$.34 to \$1.00 per unit, while the annual cost of sending proxy materials through intermediaries to beneficial holders ranged from \$1.31 to \$2.38 per unit. See *Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities* at 24-25 (Committee Print 1976).

²⁶ E.g., if an Odd-lot offer is made to holders of 50 shares or less, a person holding 150 shares might desire to tender three separate 50 share lots into the offer. The record date requirement precludes this practice.

holders to have their securities rejected or pro-rated by the issuer.

An additional concern is that Odd-lot Offers left open indefinitely or for an extended period of time may establish a minimum price for the subject security. The record date requirement minimizes the pegging effect that may result from continuous Odd-lot Offers by limiting the number of shares of the subject security that are eligible to be purchased by the issuer at the offering price.²⁷ To prevent the development of these and other manipulative practices and to ensure against the potential for fraud in connection with Odd-lot Offers, the Commission would require the use of a record date in Odd-lot Offers excepted from the provisions of the Rule.²⁸

The amendment that the Commission has proposed would contribute to its program of responsible deregulation. The experience it has gained in regulating Odd-lot Offers under Rules 10b-6 and 13e-4 satisfies the Commission that further substantive regulation of Odd-lot Offers is unnecessary. Accordingly, the Commission proposes to remove from issuers substantial burdens in an area where little abuse or injury to shareholders has been demonstrated. At the same time, the proposed amendment builds into the Rule assurances that Odd-lot Offers will continue to be conducted in a non-discriminatory manner. Moreover, by obviating the necessity for issuers to seek exemptions in order to conduct Odd-lot Offers, the proposed amendment would save issuers from an expensive and often time-consuming process and conserve the Commission's staff resources. In any case, issuers would continue to be subject to the general antifraud and anti-manipulative provisions of the securities laws and the rules promulgated thereunder in connection with their Odd-lot Offers.

Although the Commission believes that revising its regulations of Odd-lot Offers would best be achieved by amending the Rule as proposed herein, commentators are requested to address the question whether it would be more appropriate simply to codify the conditions currently imposed on Odd-lot Offers pursuant to the exemptive process and thereby preserve the

substantive provisions of the Rule as they relate to Odd-lot Offers.

III. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act, which became effective on January 1, 1981, imposes new procedural steps applicable to agency rulemaking which has a "significant economic impact on a substantial number of small entities."²⁹ The Chairman of the Commission has certified pursuant to the Regulatory Flexibility Act that the proposed amendment to Rule 13e-4, if adopted, will not have a significant economic impact on a substantial number of small entities because the amendment excepts issuers, in the context, of Odd-lot Offers, from the provisions of the Rule, including all reporting requirements. Specifically, issuers will no longer be required to file and disseminate copies of a Schedule 13E-4 in connection with Odd-lot Offers and it will no longer be necessary for them to request exemptions from those requirements in order to conduct such offers.

IV. Statutory Basis and Text of Proposed Rule Amendment

Pursuant to Sections 3(b), 9(a)(6), 10(b), 13e(e), 14(e) and 23(a) of the Act, 15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78n(e) and 78w(a), the Commission proposes to amend § 240.13e(4) in Chapter II of Title 17 of the Code of Federal Regulations by adding a new paragraph (g)(5) to § 240.13e-4 and revising paragraph (f)(3)(i) of § 240.13e-4. The current paragraph (g)(5) of § 240.13e-4 would be renumbered as paragraph (g)(6).

List of subjects is 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Part 240 of Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

By revising paragraph (f)(3)(i) of § 240.13e-4, redesignating paragraph

²⁹ Although Section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. See Securities Exchange Act Release No. 18452 (January 28, 1982). An issuer is a "small business" or "small organization" under Rule 0-10, if the issuer, on the last business day of its most recent fiscal year, had total assets of \$3,000,000 or less.

(g)(5) as paragraph (g)(6), and adding a new paragraph (g)(5) to § 240.13e-4(g) to read as follows:

§ 240.13e-4 Tender offers by issuers.

(f) * * *

(3) * * *

(i) Accepting all securities tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares of such security and who tender all their securities, before prorating securities tendered by others; or

(g) * * *

(5) Offers to purchase from security holders who own an aggregate of not more than a specified number of shares that is less than one hundred, *provided* that the offer is made available to all records and beneficial holders who own that number of shares as of a specified date prior to the announcement of the offer.

V. Solicitation of Comments

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make submissions should submit three copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, not later than January 17, 1983. Reference should be made to File No. S7-952. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, NW., Washington, D.C. 20549.

By the Commission.

George A. Fitzsimmons,

Secretary.

November 17, 1982.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 13e-4 set forth in Securities Exchange Act Release No. 34-19246, if promulgated, will not have a significant economic impact on a substantial number of small issuers. Specifically, issuers making a tender offer to holders of odd-lots will be excepted from the reporting requirements of the rule, including the need to file a Schedule 13E-4, and also will be relieved of the need to request an exemption

²⁷ The possible pegging effect of a continuous Odd-lot Offer is also minimized by the small percentage of shares that generally are held in odd-lots.

²⁸ An issuer that chooses not to use a record date in connection with an offer to odd-lot holders would not be prohibited from making that offer. Such an offer, however, would remain fully subject to the Rule and the issuer would be required either to obtain an exemption or to comply fully with all provisions of the Rule.

from provisions of the rule in order to conduct such tender offers.

John S. R. Shad,
Chairman.

November 18, 1982.

[FR Doc. 82-32400 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 22, 113, 145, 158 and 191

Drawback; Proposed Specialized and General Provisions

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to a Customs proposal to revise the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. A document inviting the public to comment on the proposal was published in the *Federal Register* on August 26, 1982 (47 FR 37563). Comments were to have been received on or before November 24, 1982. Several requests have been received to extend the period for the submission of comments claiming that because of the complexity of the issues involved, additional time is needed to prepare and submit thorough comments. Customs believes that the requests have merit. Accordingly, the period of time for the submission of written comments is extended to January 21, 1983.

DATE: Comments must be received on or before January 21, 1983.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Steuart, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5856).

Dated: November 22, 1982.

John P. Simpson,

Director, Office of
Regulations and Rulings.

[FR Doc. 82-32492 Filed 11-24-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 82N-0180]

Proposed Reclassification of Daily Wear Spherical Contact Lenses Consisting of Rigid Gas Permeable Plastic Materials

AGENCY: Food and Drug Administration.
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule which, if adopted, would reclassify marketed daily wear spherical contact lenses consisting of certain rigid gas permeable plastic materials from class III (premarket approval) into class I (general controls). The proposal is based on new information respecting these devices. After reviewing any public comments received, FDA will promulgate a final rule reclassifying some or all of the lenses or will withdraw the proposed rule. Elsewhere in this issue of the *Federal Register*, FDA is publishing a separate proposal to reclassify certain marketed daily wear optically spherical hydrogel (soft) contact lenses from class III into class I.

DATE: Comments by December 27, 1982.

ADDRESS: Written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Maria E. Donawa, National Center for Devices and Radiological Health (HFK-300), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7175.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of the Proceedings

On March 2, 1981, the Contact Lens Manufacturers Association (CLMA), Washington, DC 20006, submitted to FDA under section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)) a petition to reclassify contact lenses consisting principally of rigid plastic materials from class III into class II (performance standards). FDA thereafter concluded that the petition did not meet all the requirements of § 860.123 (21 CFR 860.123) of the regulations governing reclassification of medical devices. FDA nonetheless determined that CLMA's objective was meritorious and tentatively concluded that daily wear

spherical contact lenses consisting principally of rigid plastic materials should be reclassified from class III into class II. Under section 513(e) of the act and § 860.130(b)(1) (21 CFR 860.130(b)(1)) governing reclassification under section 513(e), FDA issued on its own initiative a notice of intent to initiate a change in the classification of such lenses (46 FR 57648; November 24, 1981).

Because the agency issued on its own initiative the notice of intent that FDA would have been required to issue had CLMA's petition not been inadequate (see § 860.130(d)), the agency concluded that the petition was moot and so stated in the November 24, 1981 notice.

The notice of intent invited public comment regarding any impact that reclassification of daily wear spherical contact lenses consisting principally of rigid plastic materials would have on manufacturers or distributors of contact lenses, on the costs or prices paid by consumers purchasing contact lenses, on governmental agencies or geographic regions, on whether the rulemaking would have significant or adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. As of October 6, 1982, FDA had received 51 comments from ophthalmologists, optometrists, and contact lens manufacturers concerning lenses consisting principally of rigid plastic materials. Fifty comments favored reclassification into class II and are further discussed in section VII of this proposal. A comment argued that FDA should not reclassify daily wear spherical contact lenses made of all types of rigid plastic materials because the information available to the agency does not show that lenses made from all types of such materials are safe and effective for their intended use. FDA agrees with the comment. As discussed in section II of this proposal, the daily wear spherical contact lenses proposed for reclassification include only those lenses composed of certain rigid plastic materials.

In addition to the comments received on the notice of November 24, FDA also received comments on CLMA's petition. Two of these comments objected to any reclassification of these lenses if there is not a performance standard in effect. FDA has recognized some of these comments' substantive concerns in section VI, which invites public comment on this proposal.

B. The Statutory Scheme

On May 28, 1976, the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), amending the Federal Food, Drug, and Cosmetic Act, became law. The amendments established a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the act, establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of any device's safety and effectiveness. The three categories are as follows: class I, general controls; class II, performance standards; class III, premarket approval. A device is in class I if the general controls authorized by or under the act are sufficient to provide reasonable assurance of the safety and effectiveness of the device (section 513(a)(1)(A)(i) of the act; 21 CFR 860.3(c)(1)). A class II device is a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, for which there is sufficient information to establish a performance standard to provide such assurance, and for which "it is therefore necessary to establish * * * a performance standard under section 514 [21 U.S.C. 360d] to provide reasonable assurance of its safety and effectiveness" (section 513(a)(1)(B) of the act; 21 CFR 860.3(c)(2)). A device is in class III if the device cannot be classified into class I or class II and if, in addition, the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or if the device presents a potential unreasonable risk of illness or injury. For a device in class III, premarket approval is or will be required in accordance with section 515 of the act (21 U.S.C. 360e) to provide reasonable assurance of the safety and effectiveness of the device (section 513(a)(1)(C) of the act; 21 CFR 860.3(c)(3)).

The amendments not only established a comprehensive system of device regulation, they also changed the definition of "device" in section 201(h) of the act (21 U.S.C. 321(h)) so that some products that previously were "new drugs" within the meaning of section 201(p) of the act upon enactment of the amendments became "devices" under the revised definition in section 201(h).

Before passage of the amendments, FDA considered certain ophthalmic devices to be "new drugs" subject to section 505 of the act (21 U.S.C. 355),

which forbids the marketing of such drug unless the agency has approved a new drug application (NDA) covering the drug, use, and labeling in question. To provide for the continuous regulation of these products—that is, products that previously were regulated as "new drugs" but now are defined as "devices"—Congress included in the amendments special transitional provisions (section 520(l) of the act (21 U.S.C. 360j(1)). The transitional provisions apply to any product that is a device (under the revised definition in section 201(h)) and that satisfies one or more of six criteria. Under one of these criteria (section 520(l)(1)(E)),

(1) [a]ny device intended for human use—

(E) which the Secretary in a notice published in the Federal Register before the enactment date has declared to be a new drug subject to section 505 * * * is classified in class III unless the Secretary in response to a petition [for reclassification] * * * has classified such device in class I or II.

The transitional provisions further provide in section 520(1)(3)(D)(i):

(3) * * *
(D)(i) * * * [A] device which is described in subparagraph * * * (E) * * * of paragraph (1) and which is in class III is required, unless exempt under subsection (g) [which governs device investigations] of this section, to have on and after sixty days after the enactment date in effect an approved application under section 515.

The provisions quoted above specifically provide that any device which FDA, by notice published in the Federal Register before enactment of the amendments, declared to be a "new drug" subject to section 505 of the act, is now classified in class III and, as such, is required either to have an approved premarket approval application (PMA) under section 515 of the act, or an investigational device exemption from such approval as provided for by section 520(g) of the act, unless the device has been reclassified by FDA into class I or II. Section 501(f)(1)(C) of the act (21 U.S.C. 351(f)(1)(C)) provides in relevant part that a device shall be deemed to be adulterated:

(f)(1) If it is a class III device—(C) which was classified under section 520(1) into class III, which under such section is required to have in effect an approved application under section 515, and which does not have such an application in effect.

Thus, any transitional device that does not have the required approved PMA is adulterated and is, therefore, prohibited from interstate commerce under section 301(a) of the act (21 U.S.C. 331(a)).

In a notice published in the Federal Register of September 30, 1975 (40 FR 44844), FDA declared that all soft contact lenses, defined as all contact lenses consisting of polymers other than polymethyl-methacrylate (PMMA), e.g., cellulose acetate butyrate (CAB), polycarbonate, silicone, and hydroxyethylmethacrylate (HEMA), were "new drugs" subject to premarket clearance under section 505 of the act. The notice, which also included a proposed regulation to codify this position, states that since the introduction of soft contact lenses in the 1960's FDA has regarded all contact lenses made from non-PMMA materials as "new drugs," and explains that the agency's decision to regulate them under section 505

* * * was based on a recognition that new plastic materials that had not been shown to be safe or effective for use were being introduced for use in the manufacture of contact lenses. The introduction of these new materials led to new lens design and use, new manufacturing methods, and new methods for lens care. The Food and Drug Administration is concerned that the use of these contact lenses may result in serious eye damage if the new material of which they are composed is unsafe for use in the eye, if the user cannot feasibly care for the lenses, or if the highly complex procedures for the manufacture of these lenses are not carefully controlled to assure a product of uniform quality.

The notice went on to describe the types of studies that FDA concluded sponsors need to conduct to determine the safety of soft contact lenses and the factors that need to be taken into account to assess the adequacy of the procedures for manufacturing such lenses (see 40 FR at 44845; September 30, 1975).

As a result of the 1975 declaration and proposal, under the transitional provisions discussed above, non-PMMA contact lenses on the date of the amendments were automatically classified into class III without need for regulations or other action on the part of the agency. Nonetheless, in a notice published in the Federal Register of December 16, 1977 (42 FR 63472) (the transitional notice), FDA provided all interested persons further notice that various generic types of devices, including soft contact lenses, were class III devices subject to the premarket approval requirements of section 515 of the act. In addition, FDA affirmed the class III status of soft contact lenses in a notice published in the Federal Register of January 13, 1978 (43 FR 1966). The January 13, 1978 notice, which withdrew the 1975 proposed regulation but did not affect its declaration, stated:

Those [contact lenses] that do not consist entirely of [PMMA] are * * * subject to the transitional provisions of section 520(1) * * * and therefore may not be commercially distributed without premarket approval.

C. The Legal Standard Governing Reclassification Under Section 513(e)

Section 513(e) of the act authorizes FDA to reclassify a device based on "new information" respecting the device. The term "new information" comprehends information developed as a result of a reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at that time. See, e.g., *Holland-Rantos v. United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174, n. 1 (D.C. Cir. 1978); *Upjohn v. Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell v. Goddard*, 366 F.2d 177 (7th Cir. 1966). In each of the cited cases, FDA had taken final action to withdraw approval of a marketing permit, rather than to effect a change that would relieve manufacturers of the obligation to obtain such a permit, as the proposal would do here. But the basis for both types of actions is the same, namely, a reevaluation made in light of changes in "medical science." *Upjohn v. Finch*, *supra*, 422 F.2d at 951. The agency believes, therefore, that the act permits a reevaluation based on such changes to support reclassification of a device, whether from class III into class I (or class II), class II into class I (or class III), or class I into class II (or class III).

The "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and § 860.7(c) of the regulations. As specified in § 860.7(c)(1), FDA relies upon only such evidence to determine whether there is reasonable assurance that a device is safe and effective. For the purposes of reclassification, the valid scientific evidence upon which the agency relies is required to be publicly available, i.e., may not be based on trade secret or confidential commercial information in PMA's (section 520(c) of the act), or on the detailed summaries of information respecting the safety and effectiveness of devices for which there are approved PMA's (section 520(h)(3) of the act). FDA is required to make these summaries available to the public upon issuance of orders approving PMA's (section 520(h)(1) of the act).

To reclassify a device under section 513(e) of the act, the statute and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and

(2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. In the case of a device classified in class III and proposed for reclassification into class I, the statute and the regulations require such evidence of safety and effectiveness to show (1) why the device should not remain in class III and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device.

Based on a careful review of new, publicly available, valid scientific evidence, FDA has tentatively concluded that daily wear spherical contact lenses consisting of certain rigid gas permeable plastic materials should be reclassified into class I (general controls). In FDA's judgment, the information discussed in this preamble shows that the devices are safe and effective for their intended use, and FDA believes that the general controls provisions of the act are sufficient to provide reasonable assurance of the safety and effectiveness of the lenses. The decision to propose reclassification into class I, rather than class II once a performance standard is in effect, is based on FDA's belief that although sufficient information exists to establish a standard to provide reasonable assurance of the safety and effectiveness of daily wear spherical contact lenses consisting of certain rigid gas permeable plastic materials, there is no need to establish a performance standard to provide such assurance.

II. Identification of the Device

For the purpose of reclassification, FDA is identifying this generic type of device as a daily wear spherical contact lens consisting of rigid gas permeable plastic materials. Such a lens is indicated for daily wear for the correction of myopia, hyperopia, or aphakia. Because the requisite publicly available safety and effectiveness data that FDA may use as the basis for reclassification apply only to a contact lens composed of a limited number of materials, a lens subject to this proposal is composed only of the following: (1) Cellulose acetate butyrate (CAB); or (2) Polyacrylate-silicone.

This proposal applies to any daily wear spherical contact lens that is made of the materials listed above and that has received premarket approval, and any contact lens FDA determines to be substantially equivalent to such approved lenses.

Contact lenses composed of CAB or polyacrylate-silicone are characterized as chemically and physically stable under the conditions of their intended use, optically clear, nontoxic, and

nonallergenic. Such lenses do not support bacterial growth and are generally benign to corneal tissue. They provide gas permeability, wettability, or tear pumping action to ensure healthy maintenance of corneal tissue. There generally is no significant leaching of substances from contact lenses composed of CAB or polyacrylate-silicone. Those leachables present are of minimum concentration and are nontoxic and nonirritating.

Rigid lenses consisting of cross-linked PMMA are not included in this proposal because FDA has tentatively concluded that such lenses are PMMA lenses within the meaning of the 1975 proposal, and therefore do not require premarket approval. When FDA issued that proposal, certain lenses that were thought to consist entirely of PMMA, and which FDA regulated as devices rather than new drugs, actually were not pure PMMA. Such lenses consisted of PMMA and several ingredients (Refs. 1 and 2), including catalysts (e.g., benzoylperoxide), cross-linking agents, comonomers, or chain transfer agents.

In the 1978 notice that withdrew the 1975 proposal, FDA stated:

The Commissioner of Food and Drugs recognizes that issues may arise as to whether particular contact lenses would have been regarded as devices or as new drugs before the Medical Device Amendments. These issues are relevant in determining whether particular contact lenses are subject to premarket approval by virtue of the transitional provisions. The Commissioner believes that such issues, if they arise, should be addressed on a case-by-case basis or in the future regulations classifying contact lenses that are not subject to the transitional provisions (43 FR 1966).

FDA cautions that, except for cross-linked PMMA lenses that FDA determines are substantially equivalent to PMMA lenses, cross-linked PMMA lenses remain in class III and may not be distributed in commerce without premarket approval. In at least one case, FDA already has determined that a cross-linked PMMA lens is substantially equivalent to a PMMA lens (Ref. 3). For the purpose of determining whether cross-linked PMMA lenses in general should be regarded as PMMA lenses, FDA will issue a Federal Register notice reopening the administrative record and the comment period in the rulemaking proceeding to classify PMMA lenses, which FDA has proposed to classify into class II (47 FR 3694 at 3736; January 26, 1982). Cross-linked PMMA lenses will continue to be a class III device subject to the premarket approval provisions of the statute unless FDA concludes that they are PMMA lenses and includes

them in the final regulation classifying PMMA lenses.

Multifocal (including bifocal), aspherical, and toric contact lenses consisting of rigid gas permeable plastic materials are excluded from this proposal because FDA is not aware of adequate new, publicly available, valid scientific evidence showing that such lenses are safe and effective.

This proposal would not exempt tinted contact lenses from the color additive provisions in section 706 of the act (21 U.S.C. 376). Regardless of whether a rigid gas permeable plastic contact lens is classified into class III, class II, or class I, a color additive in such a lens that comes in direct contact with the body of man or other animals for a significant period of time is subject to regulation under section 706. (See 21 U.S.C. 376.) Any rigid gas permeable plastic contact lens that bears or contains a color additive accordingly is deemed to be adulterated under section 501(a)(4) of the act (21 U.S.C. 351(a)(4)) and thus prohibited from commerce unless, among other things (1) there is in effect, and such additive and such use are in conformity with, a regulation issued under section 706(b) of the act (21 U.S.C. 376(b)) listing such additive for such use or (2) such additive and such use conform to the terms of an exemption which is in effect pursuant to section 706(f) of the act (21 U.S.C. 376(f)).

III. Reasons for the Proposal

To determine the proper classification of the device, FDA considered the criteria specified in section 513(a)(1) of the act. For the reasons discussed below, FDA has tentatively concluded that the general controls authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, 360j) are sufficient to provide reasonable assurance of the safety and effectiveness of daily wear spherical contact lenses composed of CAB or polyacrylate-silicone.

1. New, publicly available, valid scientific evidence shows that the device is safe and effective for its intended use. The safety of the device also is shown by the absence of reports in the literature of serious, irreversible adverse effects on health presented by the device. Additionally, FDA notes that no such alleged effects have been

reported to the agency's Device Experience Network (DEN).

2. The materials that contact the eye that are used in the device have been shown to be generally acceptable and to have known acceptable properties (Ref. 4). FDA's guidelines for toxicological, microbiological, and clinical evaluation of contact lenses and guidelines for contact lens manufacturing controls have been used by contact lens manufacturers for premarket clearance submissions (NDA's and PMA's) for the past 10 years (Ref. 5). A guideline developed by the former U.S. Interagency Regulatory Liaison Group describes test methods used to evaluate acute eye irritation (Ref. 6). Autian provides additional information on toxicological evaluation of biomaterials (Ref. 7) and Galin, et al., provide data on the use of tissue culture methods to test toxicity of ocular plastic materials (Ref. 8).

3. Current methods of chemical and physical analyses of materials allow determination of purity, structure, and solubility of polymers, and the presence of trace elements (Ref. 7).

4. FDA believes that clinically significant properties and design characteristics of the device include total effective oxygen transport to the cornea by gas permeability and tear pumping; degree of surface wetting; dimensional stability under normal use, including cleaning and handling; optical transmission and refractivity; tensile and flexural strength and recovery from deformation; and abrasion and impact resistance. By including in this proposal only those rigid daily wear spherical contact lenses that consist of CAB and polyacrylate-silicone and that have received premarket approval and any contact lenses found by FDA to be substantially equivalent to such approved lenses, the agency believes the clinically significant properties and design characteristics listed above will be assured, should any of the lenses proposed for reclassification actually be reclassified.

5. FDA recognizes that all the general controls provisions of the statute apply to the device. Of particular importance, however, are the premarket notification procedures (21 CFR 807.87), which enable FDA to determine substantial equivalence, and the current good manufacturing practice (GMP) regulations (21 CFR Part 820), which apply to all devices. To establish that a new lens is substantially equivalent to any currently marketed lens that is reclassified, the manufacturer should be prepared to demonstrate substantial equivalence in terms including, but not

limited to, design; composition; optical transmission (and homogeneity) and index of refraction; and other physical properties including oxygen permeability, chemical and physical stability, tensile and flexural strength; biocompatibility, including cytotoxicity, eye irritation, and nonsupport of bacterial growth; impurities; leachables; heavy metal levels; preservative uptake and release; and lens care/cleaning regimen compatibility. All these properties relate to the basic characteristics of the device. To establish substantial equivalence, the manufacturer also will be required to demonstrate compliance with 21 CFR Part 820. FDA may permit such a showing to be made in a premarket notification submission containing a detailed description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the device and how such methods, facilities, and controls meet the requirements of the regulations.

In the transitional notice, FDA stated that some of the types of devices formerly regarded by the agency as new drugs—including soft contact lenses—and for which premarket approval is required "may be adequately regulated under performance standards." (See 42 FR at 63474; December 16, 1977.) In that notice, FDA also stated: "[U]ntil a performance standard applicable to any [of certain specified products, including soft contact lenses] is established and becomes effective, that product will continue to be subject to premarket approval." A performance standard for rigid gas permeable contact lenses could address, among other things, biocompatibility, oxygen permeability, polymer ratios and other specifics of composition, assays for the purity of materials, leaching, biodegradability, configuration and design, and cleaning and disinfection. FDA expressed concerns about some of these variables and the need for manufacturing controls to assure uniform quality in the 1975 notice declaring such lenses as new drugs. (See section I.B. above).

This proposal to reclassify daily wear spherical contact lenses composed of CAB or polyacrylate-silicone into class I, rather than into class II upon the effective date of a performance standard promulgated in accordance with section 514 of the act, is based on FDA's tentative conclusion that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of such lenses. FDA believes that sufficient information exists to establish a section 514 standard to provide reasonable

assurance of the safety and effectiveness of the device; however, FDA does not believe it is necessary to establish such a standard to provide such assurance.

FDA notes that in 1975, when the agency declared as new drugs all contact lenses that did not consist entirely of PMMA, there was relatively little publicly available information about, or experience with, non-PMMA lenses, and the materials from which such lenses were being manufactured had not been shown to be safe or effective for use. As discussed in section IV of this notice, since the late 1970's rigid gas permeable contact lenses have been marketed in substantial numbers in this country, and they have been shown to be safe and effective. FDA believes that this marketing experience reflects such lenses' basic biocompatibility and nonbiodegradability, and the feasibility of cleaning and disinfecting them. Application of the premarket notification requirements set out in section 510(k) of the act (21 U.S.C. 360(k)) and § 807.87 of the regulations, including the requirement that manufacturers demonstrate substantial equivalence to reclassified marketed lenses with respect to design, composition, optical properties, biocompatibility, and other basic characteristics of the device referred to earlier in this section of the preamble, will enable FDA to ensure that only daily wear spherical rigid gas permeable contact lenses that are safe and effective will be marketed. The GMP regulations require all manufacturers to prepare and implement quality assurance programs intended to assure that devices will be of uniform quality, safe, effective, and otherwise in compliance with the act. Application of the GMP regulations will enable FDA to ensure that only daily wear spherical rigid gas permeable contact lenses of uniform quality are marketed. For all these reasons, FDA believes that a performance standard is not necessary to assure biocompatibility, nonbiodegradability, or the other composition and design characteristics referred to above, or to ensure the manufacture of lenses of uniform quality.

IV. Summary of the Data on Which the Proposed Reclassification is Based

A. Preclinical Data

The first patent for a PMMA contact lens was granted in 1950 (Ref. 10). In recent years, other rigid plastic materials have been developed and used for contact lenses. The first CAB lens

was approved by FDA in 1978. A polyacrylate-silicone lens was approved in 1979. At present, approximately 1 million people in the United States wear contact lenses consisting of CAB or polyacrylate-silicone (Ref. 11). Since the introduction of such lenses, few reports of adverse reactions or complications have been described in the literature, or submitted to FDA through its DEN. FDA recognizes that the DEN is wholly voluntary and, as such, cannot reasonably be expected to receive reports of all adverse reactions or complications from rigid gas permeable contact lenses composed of CAB or polyacrylate-silicone. FDA believes, however, that the reports received through the DEN are representative of some of the types of adverse reactions or complications that may result from the use of such lenses. As of September 1982, the DEN contained three reports of adverse reactions to such lenses, and three reports of adverse reactions to lenses whose type could not be identified (Ref. 12). None of these reports indicated that any serious, irreversible adverse effects had occurred as a result of CAB or polyacrylate-silicone rigid contact lens wear.

Corneal tissue integrity and wearer comfort are important considerations in the safe use of daily wear contact lenses. The lack of oxygen permeability of PMMA lenses, if not offset by tear pumping action, has been linked to corneal edema and subsequent wearer discomfort (Ref. 13). In fact, a study by Mandell (Ref. 14) indicates that even a carefully designed PMMA contact lens fitted by the most skilled practitioner may cause some level of edema. In contrast, the gas permeability of contact lenses consisting of CAB or polyacrylate-silicone copolymers allows direct transmission of oxygen to corneal tissue (Refs. 15 and 16). Additional advantages ascribed to rigid gas permeable contact lenses include greater wearer comfort and less probability of corneal abrasion from physiological insult than have been experienced with PMMA contact lenses (Ref. 13).

Contact lenses composed of CAB are chemically stable, optically clear, nontoxic, and nonallergenic (Ref. 17). The edge thickness and contour of rigid plastic contact lenses, including CAB, are two important factors in determining tolerance by the patient (Ref. 18). Morris and Lowther measured the thickness of two types of CAB contact lenses (17 lenses in total) at different distances from the edge, and edge contours were viewed microscopically (Ref. 18). A

difference in thickness and contour was found among CAB contact lenses produced by different manufacturers. This difference could affect contact lens comfort. Because the edges of contact lenses are made in standard shapes and not to patient specifications, adjustments in edge thickness and contour can be made after patient fitting, if needed (Ref. 19). These adjustments, which may include flattening the lens curve, thinning the front surface, or polishing the edge itself, are considered standard practice after patient fitting (Ref. 19). The surface tension of CAB contact lenses is lower than that of PMMA contact lenses, thus facilitating wettability of the contact lens surface (Ref. 17). For PMMA lenses to exhibit wettability comparable to that of CAB lenses, PMMA lenses need to be treated with wetting solutions (Ref. 17).

Polyacrylate-silicone copolymer contact lenses consist of complex siloxanyl methacrylate polymers (Refs. 20 and 21). Such lenses contain PMMA for rigidity and polymerized silicone for oxygen permeability (Refs. 20 and 21). They are characterized as optically clear, chemically stable, nontoxic, nonallergenic, oxygen permeable, wettable, and scratch and break resistant (Refs 20 and 21). As noted for CAB contact lenses, variations in the edge thickness and contour of polyacrylate-silicone lenses do occur, even among contact lenses produced by an individual manufacturer (Ref. 18). FDA believes this concern can be addressed through standard adjustments or edge modifications after patient fitting (Ref. 19). Design specifications of these contact lenses include specifications for diameter, edge lift, center and edge thickness, lens flexure, and lenticular construction (a carrier rim surrounding the central optical zone) and have been described (Ref. 21). The availability of practical fitting information to ophthalmologists and optometrists increases the likelihood of effective fitting and wearing. This information can be specified in labeling and assured through general controls.

B. Clinical Data on Specific Rigid Gas Permeable Lenses

1. *Cellulose acetate butyrate (CAB)*. Kline and DeLuca (Ref. 22) studied the clinical response of 100 randomly selected myopic patients who had been fitted with CAB contact lenses. The purpose of the study was to evaluate the advantages and disadvantages of CAB lenses. The lenses used in the study had an index of refraction of 1.475. The average center thickness was 0.20 millimeter (mm) and average edge

thickness was 0.15 mm. The optic zone was 1.4 mm less than the diameter. There were three peripheral curves 1.5 mm progressively flatter than the base curve. The diameters used ranged from 9.2 mm to 10.8 mm.

Of the 100 myopic patients, 52 were female and 48 were male. Patients ranged from 16 to 41 years of age. Seventy-five of the 100 patients had been unsuccessful in previous attempts to wear PMMA or hydrogel (soft) contact lenses, and 25 patients were first-time contact lens wearers. The flattest keratometry readings ranged from 41.75 to 50.00 diopters. Eight hours of wearing time was intended to be reached within 1 week beginning with 3 hours on the day of dispensing.

Criteria for success included an assessment of visual acuity, subjective response, corneal physiology, and lens performance. Spectacle blur was assessed by measuring visual acuity with the spectacle prescription after removal of lenses. Patients were considered successful wearers if they experienced comfort, a minimum wearing time of 8 hours a day, visual acuity of 20/25 or better, no corneal edema, no vascularity, no significant bulbar conjunctival injection, no significant corneal staining, no increase in follicular hypertrophy of the superior palpebral (upper eyelid) conjunctiva, and no spectacle blur.

Of the 100 patients studied, 79 were successful wearers, while 21 were unsuccessful and discontinued use of the CAB lens. Of the 75 patients who had been successful PMMA or hydrogel (soft) contact lens wearers, 57 patients (77 percent) were successful with CAB lenses and 18 patients (23 percent) were unsuccessful. Of the 25 patients who were first-time lens wearers, 22 patients (88 percent) were successful and 3 patients (12 percent) were unsuccessful. Of the total of 21 patients who discontinued lens wear, 1 patient had spectacle blur, 2 patients had corneal edema and discomfort, 2 patients had fluctuating visual acuity and discomfort, and 16 patients had problems limited to discomfort. Corneal staining at the 3 and 9 o'clock positions of the eye occurred in 20 of 200 eyes. Mild bulbar conjunctival infection developed in 16 eyes, and moderate infection developed in 6 eyes. Overall, 72 patients reported good comfort with the lens; 8 patients reported fair comfort (lens awareness); and 20 patients had poor comfort and could not tolerate the CAB lens.

Over 50 percent of the patients were fitted "on-K," with the remaining almost equally divided between "steeper than K" and "flatter than K." Fitting relationship to K readings and lens

diameter was analyzed to show possible correlation with comfort and successful wear. Although the results were not reported as statistically significant, lenses fitted "flatter than K" resulted in a higher percentage of poor comfort than the other two categories. Also, a higher percentage of failures were associated with lenses fitted "flatter than K." Success and failure were approximately the same for each diameter. Lenses were changed an average of 1.67 times on successful patients and 4.8 times on unsuccessful patients. No significant changes in base curves or powers of CAB lenses were found following lens wear.

The study showed that of 100 patients fitted with CAB lenses, 79 percent were successfully fitted for correction of myopia. The small incidence of spectacle blur with CAB lenses represents a significant advantage of this type of lens. Two patients with fluctuating vision had residual astigmatism requiring toric contact lenses. Reported glare ("watery" or "blurry" vision) was relieved by fitting larger diameter lenses. Discomfort was the major problem of patients adapting to CAB lenses. Of 107 eyes unsuccessfully fitted with previous lenses because of edema and discomfort, 80 were successfully fitted with CAB lenses (75 percent). This study, which was limited to myopic patients, showed a high rate of success with this CAB lens and strongly supports its safety and effectiveness for myopic correction.

Sigband (Ref. 23) reported on the clinical experience of 65 patients who previously had been unable to wear contact lenses and who were fitted with lathe-cut CAB contact lenses. The CAB lens used in the study ranged in power from -1.00 to -6.00 diopters; diameters were 8.8 mm, 9.2 mm, or 9.6 mm. Sixty of the 65 patients had been unable to wear PMMA lenses, and 5 had been unable to wear hydrogel (soft) contact lenses. The majority of patients (54) were myopic, 4 were hyperopic, and 7 were aphakic. Of the 65 patients fitted with CAB lenses, 7 were lost to followup. Of the remaining 58 patients, 48 patients (83 percent) were successful, and 10 patients were not successful wearers. Of the five patients who had been unable to wear hydrogel (soft) lenses, four patients (80 percent) were successfully refitted with CAB lenses. The seven patients lost to followup had previously been unsuccessful as PMMA lens wearers. Of the remaining 53 patients who had been unable to wear PMMA lenses, 44 patients (83 percent) were successfully refitted with CAB lenses. The primary cause of the 10 failures was lack of

comfort (8 patients). One aphakic patient was unable to manipulate the lens, and one patient's lens developed deposits. Thirty-seven patients wore the CAB lenses at least 2 years; of these, 11 wore their lenses for 3 years or more.

This study showed that this CAB lens was safe and effective in 85 percent of 65 patients who were unable to wear hard or hydrogel (soft) contact lenses.

The use of CAB lenses in patients who had been unable to wear PMMA contact lenses also has been reported by Hales (Ref. 24), who conducted a study of 50 patients selected from a private clinical practice. Thirty-five of the 50 patients were female and 15 were male. Patients ranged in age from 12 to 57 years, with an average of 27 years of age. All eyes were normal (nondiseased), and all patients had previously discontinued use of PMMA contact lenses because of discomfort, poor vision, or corneal edema. Soft contact lenses had been tried by 10 patients; 7 patients had experienced discomfort or poor vision and had stopped wearing the lenses. Indications for use of the CAB lens included myopia, mild hyperopia, aphakia (lenticular lenses), astigmatism (prism ballast lenses), and presbyopia (bifocal lenses). The "flattest K" reading was used to calculate the base curve. Standard tables were used to determine diameter and thickness. Lens wear began with 4 hours on the first day and increased by 1 hour each day until the lenses could be worn all day. Criteria for evaluation of lens wear included comfort, excessive movement, tearing, excessive light sensitivity, flare, halo, pain, burning, itching, spectacle blur, unusual eye secretions, awareness of the lens, excessive blink rate, visual acuity, variable vision, blurred distant vision, reading problems, lens deposits, and problems with manipulating the lenses. Followup ranged from less than 2 months to more than 1 year.

Thirty of the 50 patients were successful wearers (60 percent); of these, 24 were myopic, 3 were hyperopic, and 3 were aphakic. Twenty patients (40 percent) discontinued lens wear; 16 were myopic and 4 were hyperopic. Of 99 eyes studied (50 patients), 78 eyes (79 percent) had the same visual acuity with the PMMA and the CAB lenses. Seven eyes (7 percent) had better vision with the PMMA lenses and 14 eyes (14 percent) had better vision with the CAB lenses. With PMMA lenses, visual acuity was 20/30 or better in 87 of the eyes (88 percent); and with CAB lenses, in 97 of the eyes (98 percent). Only 2 eyes had vision worse than 20/30 with the CAB lenses.

No patient discontinued use of the CAB lens due to poor vision or lens imperfections. Of the 20 patients who discontinued use of CAB lenses, 15 patients did so because of discomfort and 5 because of diffuse central corneal edema. Of the latter five patients, all had Schirmer test results showing decreased tear production. No patient using the CAB lens complained of spectacle blur. CAB lenses were successfully replaced with new CAB lenses in 7 patients (14 lenses). Replacement was necessary primarily because of lens instability resulting in flattening of the base curve. All patients studied had been unable to wear PMMA contact lenses. However, 60 percent were able to be successfully fitted with CAB lenses. Failures with CAB lenses were associated with inadequate tear production and discomfort.

This study showed that the CAB lenses studied were both safe and effective for the correction of myopia, hyperopia, or aphakia in the majority of patients fitted who were unable to tolerate PMMA lenses. Because discomfort and corneal edema were causes of failure for both CAB and previous PMMA lens wear and because some, but not all, persons unable to tolerate PMMA lenses were able to successfully wear CAB lenses in this and other studies (Refs. 22 and 23), FDA believes that an equivalent or higher rate of success can be expected in patients who have not experienced intolerance to PMMA contact lenses.

In a smaller clinical study of nine patients who were wearing PMMA contact lenses, Mandell (Ref. 25) reported decreased corneal edema when these patients were refitted with CAB lenses. The average corneal swelling was 6.65 percent with PMMA lenses and 2.35 percent with CAB lenses. This study supports the conclusions from previously cited studies that in certain patients rigid gas permeable CAB lenses are safer than PMMA lenses.

Garcia (Ref. 26) evaluated the safety and effectiveness of CAB lenses for extended wear in aphakia. The power of the lenses used in the study ranged from +7.0 to +21.5 diopters with an average of 14 diopters. The diameters ranged from 8.5 to 10.4 mm, with most having a -3.00 power lenticular carrier. Corneal astigmatism ranged from 0 to 5 diopters with an average of 1.6 diopters.

One hundred and two patients (139 eyes) were fitted with CAB lenses at the mean keratometry reading or steeper. Of these 102 patients, 98 patients (134 eyes) were followed for an average of 2 years. Of the 102 patients, 54 were male and 48 were female. Patients ranged from 43 to 88 years of age, with a mean of 64.2

years of age. Some patients who were initially considered for the study had no difficulty removing or inserting a lens and had no desire to attempt extended wear. These patients were excluded from the study, but it was noted that many of these patients occasionally left their lenses in overnight as a matter of convenience, suggesting high tolerance for this lens. The exact number of these patients was not stated.

All patients included in the study achieved visual acuity equal to or better than the best spectacle correction. Spectacle blur was present, but was two lines or less upon immediate removal of lenses. After several weeks, changes in corneal astigmatism ranged from -1.00 to +0.50 diopter with an average of -0.08 diopter. Of the 102 patients, 4 patients (5 eyes) were immediately unsuccessful in wearing the lens. Of these failures, one patient had decreased visual acuity and difficulty in recentering the lens when it slipped off the cornea; two patients (three eyes) had edema and blurred vision on arising; and one patient was described as "too nervous." The remaining successfully fitted 98 patients (134 eyes) were followed from 3 to 60 months with an average of 24.75 months.

At the conclusion of the study, a total of 17 patients (17 percent) with 22 eyes (16 percent) had discontinued extended wear. This number includes the four patients who were immediately unable to wear the lens. The reasons for failure included edema (four patients), discomfort and lack of tint causing difficulty in finding a decentered lens (four patients), excessive dislocations and lack of tint (three patients), cystic macular edema (one patient), poor fit (one patient), dusty environment (one patient), repeated conjunctivitis (one patient), nervousness (one patient), unknown (one patient). Topical medications (drops) for treatment of glaucoma in five patients (nine eyes) did not interfere with lens wear except for occasional dislocations when inserting the drops. Nine patients (14 eyes) with significant ocular problems in addition to aphakia were successfully fitted with these lenses. The additional ocular conditions included recurrent uveitis, Behcet's disease, postoperative staphylococcal endophthalmitis, and wound dehiscence secondary to postoperative trauma. Lens removal for cleaning ranged from removal every 4 to 7 days to every 3 to 6 weeks. The accumulation of mucus and oily deposits on the lenses was a common problem and varied in severity. There were no cases of corneal vascularization. Early in the study, conjunctival cultures were performed on a small group of patients.

The exact number was not stated. There was no significant increase in bacterial flora.

This study showed that CAB contact lenses for extended wear were safe and effective for 80 percent of the aphakic patients included in the study. FDA believes that if these lenses can be safely and effectively worn on the eye continuously for days, weeks, or months, the same lenses can be expected to be safe and effective for a lesser period, such as for daily wear.

Another study examining effectiveness and corneal response to extended wear of CAB contact lenses in aphakia was reported by Kaplan and Trimber (Ref. 27). The CAB lenses used in this study were manufactured by thermo-compression molding. Thirty patients (41 eyes), who ranged from 51 to 81 years of age with an average of 65.0 years of age, were fitted with the lens 6 weeks after cataract extraction. Patients who were able to tolerate the lens were allowed to wear it for extended periods of time. Most patients wore their lenses continuously for 1 to 2 months. All 30 patients (41 eyes) were able to wear CAB lenses for extended periods of time. Visual acuity with the lens was 20/20 or better in 17 patients, 20/25 or 20/30 in 19 patients, and 20/40 or 20/50 in 5 patients.

For each of the 30 patients (41 eyes) with extended wear CAB lenses, the corneal thickness was measured and compared to unoperated fellow eyes not wearing a contact lens, to aphakic eyes with spectacle correction not fitted for contact lenses, and to aphakic eyes with daily wear CAB lenses. Corneal thickness of the 41 eyes averaged 0.550 mm. Fourteen of the 30 patients with extended wear CAB lenses had unoperated fellow eyes not wearing a contact lens. In these patients, the corneal thickness of eyes with extended wear CAB lenses averaged 0.548 mm; the fellow eyes measured an average of 0.515 mm. The average corneal thickness of the eyes of 25 aphakic patients with spectacle correction not fitted for contact lenses was 0.525 mm. The eyes of 13 aphakic patients with daily wear CAB lenses had an average corneal thickness of 0.538 mm. Previous studies of a normal population and those with extended wear soft contact lenses showed an average corneal thickness of 0.518 mm (Ref. 28) and 0.570 mm (Ref. 29), respectively. The extended wear CAB lenses used in this study produced minimal effects on corneal thickness while providing an effective correction of visual acuity for aphakic patients. FDA believes that this study shows that this lens was safe and effective for

extended wear in aphakic patients and that this lens could be expected to be safe and effective for daily wear in aphakics.

FDA has tentatively concluded that these studies constitute valid scientific evidence demonstrating the safety and effectiveness of all marketed daily wear spherical CAB lenses.

2. *Polyacrylate-silicone copolymer.* Poster (Ref. 30) followed for 3 months 115 patients fitted with polyacrylate-silicone contact lenses. The lens used in this study was designed to allow the periphery and peripheral portion of the outer optical zone to align with the cornea. The center thickness of the lens was 0.07 mm. The geometry of the posterior surface of the lens, which contained secondary and tertiary curves, was used to determine lense positioning.

Of the 115 patients, 87 were female and 28 were male. Patients ranged from 10 to over 60 years of age. Of the 115 patients, 65 patients (56.5 percent) had been unsuccessful wearers of PMMA lenses because of limitations of wearing time and problems with comfort, edema, and staining, and 21 patients (18.3 percent) had been successful with PMMA lenses. Twelve patients (10.4 percent) had been unsuccessful with hydrogel (soft) contact lenses, and four patients (3.5 percent) had been successful with soft lenses. Thirteen patients (11.3 percent) were first-time contact lens wearers. Patients with diseased eyes, with the exception of patients with keratoconus, and patients with history of allergic reactions to contact lenses or solutions, were excluded from the study.

The evaluation of a successful fit included lens performance, over-refraction, visual acuity, comfort, lens positioning, physiological responses, and the ability to wear the lens for at least 10 hours per day with no significant symptoms or adverse physiologic responses. The criteria for a well-fitted lens included minimal apical clearance with alignment of the peripheral curves and peripheral portion of the optical zone. The lenses used in this study ranged in power from plano to -10.50 diopters, with the majority ranging from -1.25 to -6.75 diopters. Excluding 5 keratoconus patients, base curves ranged from 7.20 mm to 8.10 mm. Most patients were fitted within ± 0.15 mm of the flattest keratometry reading.

Of the 115 patients fitted with the lenses, 104 patients (90.4 percent) were successful. Of the 11 unsuccessful wearers, 5 were not followed up (several were having difficulty in adapting); 4 were switched to another lens material (reason not stated); and 2 had a history

of corneal problems from previous PMMA lens wear. Good or excellent comfort was reported at 98.5 percent of all visits. Minimal symptoms, which ceased after the first weeks of wear, included some burning or itching (five patients), mild halos (one patient), mild injection (four patients), dryness (two patients), staining (five patients), and mild edema (two patients). Staining from PPMA lens wear was resolved or decreased with use of the polyacrylate-silicone lens in four patients. In addition, several patients (number not stated) with significant corneal distortion including extensive edema, edematous corneal formations, and central corneal clouding, returned to a more physiologically normal corneal curvature.

The polyacrylate-silicone lens used in this study was effective in 90.4 percent of myopic patients studied. No serious adverse physiological responses occurred, even among unsuccessful wearers. Thus, the lens also was shown to be safe in patients in the study.

Sarver, et al. (Ref. 31), reported on a study of 46 patients who had been unable to wear PMMA lenses and who were fitted with polyacrylate-silicone lenses. The 46 patients, who were fitted with the lenses over an 18-month period, ranged from 17 to 55 years of age, with a mean age of 51 years. Thirty-eight were female and eight were male. In 40 patients (87 percent), the reasons for failure with PMMA lenses included significant edema associated with discomfort, spectacle blur, and limited wearing time; 6 patients (13 percent) experienced discomfort or flare without edema.

Forty-two patients were fitted with polyacrylate-silicone lenses having the same dimensions as their best-fitting PMMA lenses. The remaining four patients were fitted with larger diameter lenses to reduce flare and edge reflections. The mean center thickness of the lenses used in this study was 0.14 mm. The powers of the spherical lenses ranged from -8.50 to 5.75 diopters, with a mean of -3.44 diopters. The cylindrical corrections ranged from plano to -3.25 diopters, with a mean of 0.90 diopter. The flat keratometry reading ranged from 39.25 to 46.00 diopters, with a mean of 43.04 diopters.

Of 46 patients (92 eyes), 31 patients (67 percent) were successful when considering all of the following criteria: wearing time, comfort, vision, corneal edema, staining, ocular injection, and patient appearance. Thirteen patients (28 percent) were unsuccessful. The response of two patients was unknown. The 13 unsuccessful patients had persistent discomfort in spite of lens

modifications such as base-curve changes and edge refinishing. These patients had failed in attempts to wear PMMA lenses due to edema and discomfort; however, discomfort alone (not edema) was identified as the reason for the unsuccessful use of the polyacrylate-silicone lens. No significant corneal edema was observed in any patient fitted with the lenses.

Vascularization developed in three patients (no other details stated), and small amounts of central corneal staining developed in three others. Most patients reported decreased spectacle blur with the polyacrylate-silicone lens when compared to the PMMA lenses.

In 5 patients selected at random from the original 46 patients, corneal thickness was measured during an 8-hour wearing period with each of the polyacrylate-silicone lenses and the PMMA lenses of the same dimension. Measurements with each of the two lens types were made a week apart after weeks (number not stated) of wearing time. After 4 hours of wear, the mean increase in corneal thickness was 0.4 percent for polyacrylate-silicone lenses and 3.6 percent for PMMA lenses. After 8 hours, slight thinning of the cornea occurred with the polyacrylate-silicone lens, showing a mean increase of 0.2 percent; the mean increase with PMMA lenses was 3.6 percent.

Visual acuity was the same with the polyacrylate-silicone lenses as with PMMA lenses. This study, which was intentionally biased by the selection of patients who had failed with PMMA lenses, showed that the polyacrylate-silicone lens was safe and effective for the correction of myopia or hyperopia for the majority of patients studied. An absence of corneal edema and minimal corneal thickness increases were shown to be advantages of the polyacrylate-silicone lens used in this study. The major disadvantage of the lens was discomfort in some patients. Discomfort, however, had also occurred with the use of PMMA lenses.

FDA has tentatively concluded that these studies constitute valid scientific evidence demonstrating the safety and effectiveness of all marketed daily wear spherical polyacrylate-silicone lenses.

V. Risks to Health

The risks associated with the use of the device include: (1) Corneal abrasion that may occur from a chipped edge of a lens, a cracked lens, or poor lens design or fit; (2) corneal edema that may occur if lens design prevents adequate delivery of oxygen to the cornea; (3) corneal vascularization that may result from inflammation or as a result of

corneal edema; (4) rainbows or halos around objects or blurring of vision that may occur if a lens is worn continuously or for too long a time; (5) excessive tearing, unusual eye secretions, and photophobia, the cause of which would have to be determined from examination of contact lenses and eyes; and (6) giant papillary conjunctivitis, the exact cause of which is unknown.

VI. Public Comment

FDA invites comments on all aspects of the proposal, but particularly on the following issues:

1. Do the data presented in this proposal constitute sufficient "valid scientific evidence" of safety and effectiveness to support reclassification of each marketed lens consisting of CAB or polyacrylate-silicone?

a. If not, what additional publicly available data are there to support reclassification?

b. If so, are general controls sufficient to provide reasonable assurance of the safety and effectiveness of the device?

c. If general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the device, is there sufficient information to establish a performance standard to provide such assurance?

d. If general controls are not sufficient, and there is sufficient information to establish a performance standard to provide reasonable assurance of safety and effectiveness of the device, is a performance standard necessary to assure any of the lens properties or design characteristics that FDA has identified as "clinically significant" (see section III of the preamble) or to protect against any of the concerns raised in the 1975 notice declaring as new drugs all contact lenses consisting of polymers other than PMMA (see section I.B. of the preamble)?

e. Should any reclassification take effect (i) before or (ii) after such a standard has been established?

2. Is there publicly available "valid scientific evidence" to support reclassification of other than daily wear spherical lenses consisting of CAB or polyacrylate-silicone? For example, should (a) extended wear lenses, (b) toric lenses, or (c) other types of CAB or polyacrylate-silicone lenses be included in any reclassification? If so, what publicly available data are there to support reclassification of such other lenses?

3. With respect to the lenses proposed for reclassification, FDA has limited data on their use for the correction of hyperopia and in some cases aphakia. May FDA reclassify a lens for use in the

correction of myopia, hyperopia, and aphakia based solely or primarily on data showing that the lens is safe and effective (a) for the correction of myopia? (b) for the correction of myopia and aphakia?

4. Does specifying the materials of which the lenses proposed for reclassification are principally composed adequately identify the lenses for the purpose of reclassification?

5. As discussed in sections III and IV of the preamble, the safety or effectiveness of a specific rigid gas permeable contact lens is affected by its specific composition, design, and various other clinically significant properties.

a. Do the data presented in this proposal provide sufficient "valid scientific evidence" of the safety and effectiveness of CAB or polyacrylate-silicone lenses of any specific composition, design, or other characteristic?

b. If the data do not provide this evidence, may the identified lenses be reclassified because of FDA's tentative decision that the safety and effectiveness of composition, design, or other clinically significant properties of specific lenses can be assured through premarket notification submissions and substantial equivalence determinations?

6. Is there publicly available "valid scientific evidence" to support reclassification of rigid gas permeable contact lens accessories, including products for cleaning, disinfecting, wetting, and storage? If so, what publicly available data are there to support reclassification of such accessories?

VII. Economic Impact

As discussed in section I of this proposal, in the November 24, 1981 notice of intent FDA invited public comment on the economic impact of any reclassification of daily wear spherical contact lenses consisting principally of rigid plastic materials. Although none of the comments presented specific data on the economic impact, generally the comments from all groups stated that reclassification would benefit industry and consumers by enabling small firms to have access to newer and better contact lens materials. Thus, competition would increase, costs would decrease, and employment would increase in these small firms. Also, comments generally stated that the contact lens reclassification would allow small contact lens manufacturing firms to compete in the world market.

All future manufacturers of these devices would be relieved of the cost of complying with the premarket approval

requirements in section 515 of the act. FDA recognizes that there may be an economic impact on manufacturers marketing devices that are the subject of PMA's and that would be reclassified if this proposal were adopted, and invites comment regarding any such impact. The magnitude of the economic savings for manufacturers resulting from any reclassification would depend on the extent of premarket approval studies that industry would have conducted had these requirements remained in effect. This parameter cannot be reliably calculated to permit the quantification of the economic savings. Do any manufacturers or other interested persons have additional data on the economic impact of reclassification?

After considering the economic consequence of reclassifying the device as discussed above, FDA certifies that this proposal requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354).

VIII. References

The following materials are on file in the Dockets Management Branch (address above), where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Rogers, Hoge & Hills; Comments to Docket No. 75N-0254; Regulatory Policy and Proposed Rulemaking for Marketing Contact Lenses, 40 FR 44844; Nov. 28, 1975.
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11. Memorandum of Telephone Conversation, Maria E. Donawa, M.D., and Irving Arons, Arthur D. Little, Inc., Sept. 13, 1982.

12. *Device Experience Network* reports, all lenses, No. 82.256, Sept. 13, 1982.

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16. Hill, R. M., "Oxygen Permeable Contact Lenses: How Convinced Is the Cornea?" *International Contact Lens Clinic*, Winter 1975, pp. 27-29.

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18. Morris, S. D. and G. F. Lowther, "A Comparison of Different Rigid Contact Lenses: Edge Thickness and Contours," *Journal of the American Optometric Association*, Vol. 52(2), March 1981, pp. 247-249.

19. Memorandum of Telephone Conversation, Maria E. Donawa, M.D., and W. D. Platt, Ph. D., Contact Lens Manufacturers Association, Oct. 13, 1982.

20. Gaylord, U.S. Patent No. 3,808,178, "Oxygen-Permeable Contact Lens Composition, Methods, and Articles of Manufacture," April 30, 1974.

21. Williams, C. E., "New Design Concepts for Permeable Rigid Contact Lenses," *Journal of the American Optometric Association*, Vol. 50(3), March 1979, pp. 331-336.

22. Kline, L. N. and T. J. DeLuca, "A Clinical Study of CAB Lens Wear," *Journal of the American Optometric Association*, Vol. 49(3), March 1978, pp. 299-302.

23. Sigband, D. J., "Clinical Experience with the Cabcurve Contact Lens," *Contact and Intraocular Lens Medical Journal*, Vol. 6(3), July/Sept. 1980, pp. 240-243.

24. Hales, R. H., "Gas-Permeable Cellulose Acetate Butyrate (CAB) Contact Lenses," *Annals of Ophthalmology*, Sept. 1977, pp. 1085-1090.

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27. Kaplan, B. A. and C. J. Trimber, "Corneal Response to Extended Wear of CAB Contact Lenses in Aphakia," *Ophthalmology*, Vol. 87(4), April 1980, pp. 292-297.

28. Michima, S. and B. O. Hedby, "Measurement of Corneal Thickness With the Haag-Streit Pachometer," *Archives of Ophthalmology*, Vol. 80, 1968, pp. 710-713.

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List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 886 (which was proposed in the Federal Register of January 26, 1982 (47 FR 3694)) by adding new § 886.5360, to read as follows:

PART 886—OPHTHALMIC DEVICES

§ 886.5360 Daily wear spherical contact lens consisting of rigid gas permeable plastic materials.

(a) *Identification.* A daily wear spherical contact lens consisting of cellulose acetate butyrate or polyacrylate-silicone is a device that is a curved shell with a spherical surface providing monofocal refraction to be worn by a patient directly on the globe or cornea of the eye to correct refractive errors and that is removed from the eye and cleaned daily. A lens subject to this section is limited to any daily wear spherical rigid gas permeable contact lens consisting of cellulose acetate butyrate or polyacrylate-silicone in commercial distribution as of the effective date of this regulation, or a lens that is determined by the FDA to be substantially equivalent.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before December 27, 1982, submit to the Dockets Management Branch (address above) written comments on this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 1982.

Arthur Hull Hayes, Jr.,
Commissioner of Food and Drugs.

[FR Doc. 82-32332 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 886

[Docket No. 82N-0179]

Proposed Reclassification of Daily Wear Optically Spherical Hydrogel (Soft) Contact Lenses

AGENCY: Food and Drug Administration
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule which, if adopted, would reclassify certain marketed daily wear optically spherical hydrogel (soft) contact lenses from class III (premarket approval) into class I (general controls). The proposal is based on new information respecting these devices. After reviewing any public comments received, FDA will promulgate a final rule reclassifying some or all of the lenses or will withdraw the proposed rule. Elsewhere in this issue of the Federal Register, FDA is publishing a separate proposal to reclassify marketed daily wear spherical contact lenses consisting of certain rigid gas permeable plastic materials from class III into class I.

DATE: Comments by December 27, 1982.

ADDRESS: Written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Maria E. Donawa, National Center for Devices and Radiological Health (HFK-300), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7175.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of the Proceedings

On January 16, 1981, the Contact Lens Manufacturers Association (CLMA), Washington, DC 20006, submitted to FDA under section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)) a petition to reclassify soft contact lenses consisting principally of 2-hydroxyethyl methacrylate (HEMA) from class III into class II (performance standards). FDA thereafter concluded that the petition did not meet all the requirements of § 860.123 (21 CFR 860.123) of the regulations governing reclassification of medical devices. FDA nonetheless determined that CLMA's objective was meritorious and tentatively concluded that daily wear spherical soft contact lenses consisting principally of HEMA should be reclassified from class III into class II. Under section 513(e) of the act

and § 860.130(b)(1) (21 CFR 860.130(b)(1)) of the regulations governing reclassification under section 513(e), FDA issued on its own initiative a notice of intent to initiate a change in the classification of such lenses (46 FR 57648; November 24, 1981). Because the agency issued on its own initiative the notice of intent that FDA would have been required to issue had CLMA's petition not been inadequate (see § 860.130(d)), the agency concluded that the petition was moot and so stated in the November 24, 1981 notice.

The notice of intent invited public comment regarding any impact that reclassification of daily wear spherical soft contact lenses consisting principally of HEMA would have on manufacturers or distributors of contact lenses, on the costs or prices paid by consumers purchasing contact lenses, on governmental agencies or geographic regions, on whether the rulemaking would have significant or adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. As of October 6, 1982, FDA had received 40 comments from ophthalmologists, optometrists, and contact lens manufacturers concerning lenses consisting principally of HEMA. The comments, all of which favored reclassification of the lenses into class II, are further discussed in section VII of this proposal.

In addition to the comments received on the notice of November 24, FDA also received comments on CLMA's petition. Two of these comments objected to any reclassification of these lenses if there is not a performance standard in effect. FDA has recognized some of these comments' substantive concerns in section VI, which invites public comment on this proposal.

B. The Statutory Scheme

On May 28, 1976, the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), amending the Federal Food, Drug, and Cosmetic Act, became law. The amendments established a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the act, establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of any device's safety and effectiveness. The three categories are as follows: class I, general controls; class II, performance standards; class III, premarket approval. A device is in class I if the general controls authorized by or

under the act are sufficient to provide reasonable assurance of the safety and effectiveness of the device (section 513(a)(1)(A)(i) of the act; 21 CFR 860.3(c)(1)). A class II device is a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, for which there is sufficient information to establish a performance standard to provide such assurance, and for which "it is therefore necessary to establish . . . a performance standard under section 514 [21 U.S.C. 360d] to provide reasonable assurance of its safety and effectiveness" (section 513(a)(1)(B) of the act; 21 CFR 860.3(c)(2)). A device is in class III if the device cannot be classified into class I or class II and if, in addition, the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or if the device presents a potential unreasonable risk of illness or injury. For a device in class III, premarket approval is or will be required in accordance with section 515 of the act (21 U.S.C. 360e) to provide reasonable assurance of the safety and effectiveness of the device (section 513(a)(1)(C) of the act; 21 CFR 860.2(c)(3)).

The amendments not only established a comprehensive system of device regulation, they also changed the definition of "device" in section 201(h) of the act (21 U.S.C. 321(h)) so that some products that previously were "new drugs" within the meaning of section 201(p) of the act upon enactment of the amendments because "devices" under the revised definition in section 201(h).

Before passage of the amendments, FDA considered certain ophthalmic devices to be "new drugs" subject to section 505 of the act (21 U.S.C. 355), which forbids the marketing of such drug unless the agency has approved a new drug application (NDA) covering the drug, use, and labeling in question. To provide for the continuous regulation of these products—that is, products that previously were regulated as "new drugs" but now are defined as "devices"—Congress included in the amendments special transitional provisions (section 520(1) of the act (21 U.S.C. 360j(1))). The transitional provisions apply to any product that is a device (under the revised definition in section 201(h)) and that satisfies one or more of six criteria. Under one of these criteria (section 520(1)(1)(E)),

(1) [a]ny device intended for human use—

(E) which the Secretary in a notice published in the Federal Register before the enactment date has declared to be a new drug subject to section 505 . . . is classified in class III unless the Secretary in response to a petition [for reclassification] . . . has classified such device in class I or II.

The transitional provisions further provide in section 520(1)(3)(D)(i):

(3) * * *

(D)(i) * * * [A] device which is described in subparagraph * * * (E) * * * of paragraph (1) and which is in class III is required, unless exempt under subsection (g) [which governs device investigations] of this section, to have on and after sixty days after the enactment date in effect an approved application under section 515.

The provisions quoted above specifically provide that any device which FDA, by notice published in the Federal Register before enactment of the amendments, declared to be a "new drug" subject to section 505 of the act, is now classified in class III and, as such, is required either to have an approved premarket approval application (PMA) under section 515 of the act, or an investigational device exemption from such approval as provided for by section 520(g) of the act, unless the device has been reclassified by FDA into class I or II. Section 501(f)(1)(C) of the act (21 U.S.C. 351(f)(1)(C)) provides in relevant part that a device shall be deemed to be adulterated:

(f)(1) If it is a class III device—

(C) which was classified under section 520(1) into class III, which under such section is required to have in effect an approved application under section 515, and which does not have such an application in effect.

Thus, any transitional device that does not have the required approved PMA is adulterated and is, therefore, prohibited from interstate commerce under section 301(a) of the act (21 U.S.C. 331(a)).

In a notice published in the Federal Register of September 30, 1975 (40 FR 44844), FDA declared that all soft contact lenses, defined as all contact lenses consisting of polymers other than polymethylmethacrylate (PMMA), e.g., cellulose acetate butyrate (CAB), polycarbonate, silicone, and HEMA, were "new drugs" subject to premarket clearance under section 505 of the act. The notice, which also included a proposed regulation to codify this position, states that since the introduction of soft contact lenses in the 1960's, FDA has regarded all contact lenses made from non-PMMA materials as "new drugs," and explains that the agency's decision to regulate them under section 505

* * * was based on a recognition that new plastic materials that had not been shown to

be safe or effective for use were being introduced for use in the manufacture of contact lenses. The introduction of these new materials led to new lens design and use, new manufacturing methods, and new methods for lens care. The Food and Drug Administration is concerned that the use of these contact lenses may result in serious eye damage if the new material of which they are composed is unsafe for use in the eye, if the user cannot feasibly care for the lenses, or if the highly complex procedures for the manufacture of these lenses are not carefully controlled to assure a product of uniform quality.

The notice went on to describe the types of studies that FDA concluded sponsors need to conduct to determine the safety of soft contact lenses and the factors that need to be taken into account to assess the adequacy of the procedures for manufacturing such lenses. (See 40 FR at 44845; September 30, 1975.)

As a result of the 1975 declaration and proposal, under the transitional provisions discussed above, non-PMMA contact lenses on the date of the amendments were automatically classified into class II without need for regulations or other action on the part of the agency. Nonetheless, in a notice published in the *Federal Register* of December 16, 1977 (42 FR 63472) (the transitional notice), FDA provided all interested persons further notice that various generic types of devices, including soft contact lenses, were class III devices subject to the premarket approval requirements of section 515 of the act. In addition, FDA affirmed the class III status of soft contact lenses in a notice published in the *Federal Register* of January 13, 1978 (43 FR 1966). The January 13, 1978 notice, which withdrew the 1975 proposed regulation but did not affect its declaration, stated:

Those [contact lenses] that do not consist entirely of [PMMA] are * * * subject to the transitional provisions of section 520(1) * * * and therefore may not be commercially distributed without premarket approval.

C. The Legal Standard Governing Reclassification Under Section 513(e)

Section 513(e) of the act authorizes FDA to reclassify a device based on "new information" respecting the device. The term "new information" comprehends information developed as a result of a reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at that time. See, e.g., *Holland-Rantos v. United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n. 1 (D.C. Cir. 1978); *Upjohn v. Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell v. Goddard*, 366 F.2d 177 (7th Cir. 1966). In each of the cited

cases, FDA had taken final action to withdraw approval of a marketing permit, rather than to effect a change that would relieve manufacturers of the obligation to obtain such a permit, as the proposal would do here. But the basis for both types of actions is the same, namely, a reevaluation made in light of changes in "medical science." *Upjohn v. Finch*, *supra*, 422 F.2d at 951. The agency believes, therefore, that the act permits a reevaluation based on such changes to support reclassification of a device, whether from class III into class I (or class II), class II into class I (or class III), or class I into class II (or class III).

The "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and § 860.7(c) of the regulations. As specified in § 860.7(c)(1), FDA relies upon only such evidence to determine whether there is reasonable assurance that a device is safe and effective. For the purposes of reclassification, the valid scientific evidence upon which the agency relies is required to be publicly available, i.e., may not be based on trade secret or confidential commercial information in PMA's (section 520(c) of the act), or on the detailed summaries of information respecting the safety and effectiveness of devices for which there are approved PMA's (section 520(h)(3) of the act). FDA is required to make these summaries available to the public upon issuance of orders approving PMA's (section 520(h)(1) of the act).

To reclassify a device under section 513(e) of the act, the statute and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. In the case of a device classified in class III and proposed for reclassification into class I, the statute and the regulations require such evidence of safety and effectiveness to show (1) why the device should not remain in class III and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device.

Based on a careful review of new, publicly available, valid scientific evidence, FDA has tentatively concluded that certain marketed daily wear optically spherical hydrogel (soft) contact lenses should be reclassified into class I (general controls). In FDA's judgment, the information discussed in this preamble shows that the devices are safe and effective for their intended use, and FDA believes that the general

controls provisions of the act are sufficient to provide reasonable assurance of the safety and effectiveness of the lenses. The decision to propose reclassification into class I, rather than class II once a performance standard is in effect, is based on FDA's belief that although sufficient information exists to establish a standard to provide reasonable assurance of the safety and effectiveness of daily wear optically spherical hydrogel (soft) contact lenses, there is no need to establish a performance standard to provide such assurance.

II. Identification of the Device

For the purpose of reclassification, FDA is identifying this generic type of device as a daily wear optically spherical hydrogel (soft) contact lens. Such a lens is indicated for daily wear for the correction of myopia, hyperopia, or aphakia. Because the requisite publicly available safety and effectiveness data that FDA may use as the basis for reclassification apply only to a soft contact lens composed of a limited number of materials, a lens subject to this proposal is composed only of the following:

1. Poly(2-hydroxyethyl methacrylate) (polyHEMA), the polymer made from monomeric HEMA;
2. HEMA polymer with methacrylic acid;
3. HEMA polymer with 1-vinyl-2-pyrrolidinone;
4. HEMA polymer with 1-vinyl-2-pyrrolidinone and methacrylic acid;
5. HEMA polymer with 1-vinyl-2-pyrrolidinone and methyl methacrylate;
6. HEMA polymer with *N*-(1,1-dimethyl-3-oxobutyl)acrylamide; or
7. 1-Vinyl-2-pyrrolidinone with methyl methacrylate and allyl methacrylate.

These materials are polymerized with free radical initiators and cross-linked with one of the following:

1. Divinylbenzene;
2. 1,3-Propanediol trimethacrylate; or
3. Dimethacrylate that contains ethylene or ethylene glycol units.

This proposal applies to any daily wear optically spherical hydrogel (soft) contact lens that is made of the materials listed above and that has received premarket approval, and any contact lens FDA determines to be substantially equivalent to such approved lenses.

Hydrogel contact lenses are characterized by their ability to absorb and retain water. They are soft and rubbery and exhibit low tear and tensile strength when compared to contact lenses made of rigid plastic materials.

Hydrogel contact lenses are characterized as chemically stable under the conditions of their intended use, optically clear, nontoxic, and nonallergenic. When properly cleaned and disinfected, they do not support bacterial growth and generally are benign to corneal tissue. They allow oxygen delivery to the cornea primarily through hydration and, to some extent, through tear pumping action to ensure healthy maintenance of corneal tissue. Those leachables present are of minimum concentration and are nontoxic and nonirritating.

Multifocal (including bifocal), optically aspherical, and toric hydrogel contact lenses are excluded from this proposal because FDA is not aware of adequate new, publicly available, valid scientific evidence showing that such lenses are safe and effective. The spin-cast polyHEMA contact lens has a posterior aspherical surface, but because it is optically spherical, it is not excluded.

This proposal would not exempt tinted contact lenses from the color additive provisions in section 706 of the act (21 U.S.C. 376). Regardless of whether a hydrogel (soft) contact lens is classified into class III, class II, or class I, a color additive in such a lens that comes in direct contact with the body of man or other animals for a significant period of time is subject to regulation under section 706. (See 21 U.S.C. 376.) Any hydrogel (soft) contact lens that bears or contains a color additive accordingly is deemed to be adulterated under section 501(a)(4) of the act (21 U.S.C. 351(a)(4)) and thus prohibited from commerce unless, among other things (1) there is in effect, and such additive and such use are in conformity with, a regulation issued under section 706(b) of the act (21 U.S.C. 376(b)) listing such additive for such use or (2) such additive and such use conform to the terms of an exemption which is in effect pursuant to section 706(f) of the act (21 U.S.C. 376(f)).

III. Reasons for the Proposal

To determine the proper classification of the device, FDA considered the criteria specified in section 513(a)(1) of the act. For the reasons discussed below, FDA has tentatively concluded that the general controls authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, 360j) are

sufficient to provide reasonable assurance of the safety and effectiveness of daily wear optically spherical hydrogel (soft) contact lenses.

1. New, publicly available, valid scientific evidence shows that the device is safe and effective for its intended use. The safety of the device also is shown by the absence of reports in the literature of serious, irreversible adverse effects on health presented by the device. Additionally, FDA notes that no such alleged effects have been reported to the agency's Device Experience Network (DEN).

2. The materials that contact the eye that are used in the device have been shown to be generally acceptable and to have known acceptable properties (Ref. 1). FDA's guidelines for toxicological, microbiological, and clinical evaluation of contact lenses and guidelines for contact lens manufacturing controls have been used by contact lens manufacturers for premarket clearance submissions (NDA's and PMA's) for the past 10 years (Ref. 2). A guideline developed by the former U.S. Interagency Regulatory Liaison Group describes test methods used to evaluate acute eye irritation (Ref. 3). Autian provides additional information on toxicological evaluation of biomaterials (Ref. 4), and Galin, et al., provide data on the use of tissue culture methods to test toxicity of ocular plastic materials (Ref. 5).

3. Current methods of chemical and physical analyses of materials allow determination of purity, structure, and solubility of polymers, and the presence of trace elements (Ref. 6).

4. FDA believes that clinically significant properties and design characteristics of the device include total effective oxygen transport to the cornea by gas permeability and tear pumping; degree of surface wetting; dimensional stability under normal use, including cleaning and handling; optical transmission and refractivity; tensile and flexural strength and recovery from deformation; and abrasion and impact resistance. By including in this proposal only those daily wear optically spherical hydrogel (soft) contact lenses that consist of the materials identified in the proposed regulation and that have received premarket approval and any contact lenses found by FDA to be substantially equivalent to such approved lenses, the agency believes the clinically significant properties and design characteristics listed above will be assured, should any of the lenses proposed for reclassification actually be reclassified.

5. FDA recognizes that all the general controls provisions of the statute apply to the device. Of particular importance, however, are the premarket notification procedures (21 CFR 807.87), which enable FDA to determine substantial equivalence, and the current good manufacturing practice (GMP) regulations (21 CFR Part 820), which apply to all devices. To establish that a new lens is substantially equivalent to any currently marketed lens that is reclassified, the manufacturer should be prepared to demonstrate substantial equivalence in terms including, but not limited to, design; composition; optical transmission (and homogeneity) and index of refraction; and other physical properties including oxygen permeability, chemical and physical stability, tensile and flexural strength; biocompatibility, including cytotoxicity, eye irritation, and nonsupport of bacterial growth; impurities; leachables; heavy metal levels; preservative uptake and release; and lens care/cleaning regimen compatibility. All these properties relate to the basic characteristics of the device. To establish substantial equivalence, the manufacturer also will be required to demonstrate compliance with 21 CFR Part 820. FDA may permit such a showing to be made in a premarket notification submission containing a detailed description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the device and how such methods, facilities, and controls meet the requirements of the regulations.

In the transitional notice, FDA stated that some of the types of devices formerly regarded by the agency as new drugs—including soft contact lenses—and for which premarket approval is required "may be adequately regulated under performance standards." (See 42 FR 63474; December 16, 1977.) In that notice, FDA also stated: [U]ntil a performance standard applicable to any [of certain specified products, including soft contact lenses] is established and becomes effective, that product will continue to be subject to premarket approval." A performance standard for hydrogel (soft) contact lenses could address, among other things, biocompatibility, oxygen permeability, polymer ratios and other specifics of composition, assays for the purity of materials, leaching, biodegradability, configuration and design, and cleaning and disinfection. FDA expressed concerns about some of these variables and the need for manufacturing controls to assure uniform quality in the 1975

notice declaring such lenses as new drugs. (See section I.B. above.)

This proposal to reclassify daily wear optically spherical hydrogel (soft) contact lenses into class I, rather than into class II upon the effective date of a performance standard promulgated in accordance with section 514 of the act, is based on FDA's tentative conclusion that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of such lenses. FDA believes that sufficient information exists to establish a section 514 standard to provide reasonable assurance of the safety and effectiveness of the device; however, FDA does not believe it is necessary to establish such a standard to provide such assurance.

FDA notes that in 1975, when the agency declared as new drugs all contact lenses that did not consist entirely of PMMA, there was relatively little publicly available information about, or experience with, non-PMMA lenses, and the materials from which such lenses were being manufactured had not been shown to be safe or effective for use. As discussed in section IV of this notice, since the mid-1970's daily wear spherical hydrogel (soft) contact lenses have been marketed in substantial numbers in this country, and they have been shown to be safe and effective. FDA believes that this marketing experience reflects such lenses' basic biocompatibility and nonbiodegradability, and the feasibility of cleaning and disinfecting them. Application of the premarket notification requirements set out in section 510(k) of the act (21 U.S.C. 360(k)) and § 807.87 of the regulations, including the requirement that manufacturers demonstrate substantial equivalence to reclassified marketed lenses with respect to design, composition, optical properties, biocompatibility, and other basic characteristics of the device referred to earlier in this section of the preamble, will enable FDA to ensure that only daily wear optically spherical hydrogel (soft) contact lenses that are safe and effective will be marketed. The GMP regulations require all manufacturers to prepare and implement quality assurance programs intended to assure that devices will be of uniform quality, safe, effective, and otherwise in compliance with the act. Application of the GMP regulations will enable FDA to ensure that only daily wear optically spherical hydrogel (soft) contact lenses of uniform quality are marketed. For all these reasons, FDA believes that a performance standard is not necessary

to assure biocompatibility, nonbiodegradability, or the other composition and design characteristics referred to above, or to ensure the manufacture of lenses of uniform quality.

IV. Summary of the Data on Which the Proposed Reclassification Is Based

A. Preclinical Data

The first hydrogel (soft) contact lens was approved by FDA in 1971. Since then, about 30 firms have obtained approved NDA's (before the 1976 amendments) or PMA's (since the 1976 amendments) for the manufacture and distribution of soft contact lenses consisting of the materials subject to this proposal. At present, approximately 9 million people in the United States wear such lenses (Ref. 7). Since the introduction of hydrogel lenses, few reports of adverse reactions or complications have been described in the literature or submitted to FDA through its DEN. FDA recognizes that the DEN is wholly voluntary and, as such, cannot reasonably be expected to receive reports of all adverse reactions or complications from hydrogel (soft) contact lenses. FDA believes, however, that the reports received through the DEN are representative of some of the types of adverse reactions or complications that may result from the use of hydrogel lenses. As of September 1982, the DEN contained 32 reports of adverse reactions to such lenses, and 3 reports of adverse reactions to lenses whose type could not be identified (Ref. 8). None of these reports indicated that any serious, irreversible adverse effects had occurred as a result of hydrogel (soft) contact lens wear.

Hydrogels are covalently or ionically cross-linked hydrophilic polymers (Ref. 9) that swell in water to form a soft elastic gel-like material. Dimensional changes due to hydration and the general physical properties of soft contact lenses are detailed by Larke (Ref. 10). For example, the equilibrium water content (hydration) of HEMA has been shown to be largely independent of temperature (Ref. 10). FDA believes, therefore, that temperature changes associated with removal of lenses from storage, and subsequent placement on the cornea, will have little influence on water content. Use of heat disinfecting units likewise will have little effect (Ref. 10). The equilibrium water content has been shown to decrease only slightly with increasing sodium chloride percentage in the solution, indicating that tear flow has only a small influence on contact lens water content (Ref. 10). Over the range of ocular pH between 7.1

and 8.4, the equilibrium water content is unchanged (Ref. 10).

Hydrogel contact lenses are highly gas permeable. The gas transmission properties of soft contact lenses are described by Fatt (Ref. 11). Of the gases in air that normally contact the wetted surface of the cornea, the most important is oxygen, because hypoxia of the cornea can result without air contact. The oxygen transmissibility through these lenses is directly related to the degree of hydration, which is constant with variations in temperature and pH, and is affected only slightly by sodium chloride percentage, as discussed above. Therefore, oxygen transmissibility of the lenses is also constant with respect to temperature and pH and is affected only slightly by sodium chloride percentage.

Oxygen moves through lens material in the form of a dissolved gas (Refs. 11 and 12). This movement is a function of the product of the oxygen diffusion coefficient and the oxygen solubility (Refs. 12 and 13). Gas permeability of hydrogel contact lenses increases exponentially with hydration (Refs. 12 and 13). Thus, a small increase in hydration leads to an even larger increase in oxygen transmissibility, thus supporting the conclusion that the level of hydration in the hydrogel lenses described below aids in the delivery of adequate oxygen to the cornea.

The optical properties of hydrogel contact lenses are described by Bennett (Ref. 14). The optical constants of plastics in general are affected by temperature and humidity (Ref. 14). For this reason, it is accepted practice to measure the refractive index and lens power under standard conditions, which conditions can be specified in labeling and assured through general controls.

The PolyHEMA hydrogel contact lens is based upon polymer chemistry principles introduced by Wichterle and Lim (Refs. 15 and 16). This lens has an equilibrium water content of 39 percent (Ref. 17) and adequately resists the deforming force of the eyelid (Ref. 18). Although hydrogel elastic behavior at a water content greater than 39 percent may be compromised and the lens deformed by eyelid pressure, water content is only one of the parameters that influence elastic behavior. Hydrogels with higher water content can have good elastic properties and hence be resistant to deformation, depending on the polymer structure (Ref. 18). Attention to polymer structure is noted in the copolymers and graft copolymers described below.

Other ingredients are combined with HEMA in a polymer to modify the water

content. 1-Vinyl-2-pyrrolidinone, also referred to as *N*-vinyl pyrrolidone, is a major ingredient of hydrogel contact lenses. The addition of 1-vinyl-2-pyrrolidinone to HEMA increases the level of hydration up to 45 percent in one copolymer, 55 percent in another (Ref. 17), and 87.2 percent in another (Refs. 19 and 20). As noted above, this increase results in increased oxygen transmissibility and improved corneal response. A terpolymer of HEMA, methacrylic acid, and 1-vinyl-2-pyrrolidinone has a water content of 66 percent (Ref. 17). The addition of *N*-(1,1-dimethyl-3-oxobutyl)acrylamide to HEMA in one copolymer configuration results in a water content of 34 percent (Ref. 17).

A non-HEMA hydrogel lens is included in this proposal. A contact lens consisting of a terpolymer of 1-vinyl-2-pyrrolidinone, methyl methacrylate, and allyl methacrylate has been produced with a minimum 63-percent equilibrium water content, a high level of hydration (Ref. 21). When the water content of this lens is between 63 and 78 percent, it is as flexible as the polyHEMA contact lens (Ref. 13).

FDA believes that the determination of adequate corneal oxygenation with the use of hydrogel lenses depends upon water content, lens thickness, and other design parameters. As discussed in section III of this proposal, manufacturers should be prepared to demonstrate substantial equivalence in terms of these and other specifications to establish that a new lens is substantially equivalent to any currently marketed lens that is reclassified.

B. Clinical Data On Specific Hydrogels

Each of the hydrogel (soft) contact lenses discussed in this section is the subject of an approved PMA (or an approved NDA that became an approved PMA).

1. *Poly (2-hydroxyethyl methacrylate) (the polymer made from monomeric HEMA)*. Knoll and Clements (Ref. 22) evaluated the safety and effectiveness of this lens in a 2-year clinical trial involving 1,817 patients. Of these, 1,671 patients were myopic, 146 were hyperopic, and an unspecified number were aphakics. All the lenses used in the study were manufactured by the spin-casting method and were, therefore, anterior spherical lenses. All the lenses ranged from -1.00 to -9.00 diopters; most of the lenses were 13 millimeters (mm) in chord diameter and ranged from 0.09 to 0.36 mm in central thickness. Of the initially fitted 1,817 patients, 1,358 patients (75 percent) were successful wearers; 459 patients (25 percent) discontinued lens wear, generally

because they were unable to achieve the desired level of visual acuity. Of the 1,671 myopics, 1,261 patients (75 percent) were successful. Of the 146 hyperopics, 97 patients (66 percent) were successful. Over 37 percent of the successfully fitted patients had been previously unsuccessful contact lens wearers. Of the 1,358 successful wearers, visual acuity was 20/20 or better for 70 percent of myopic eyes and 65 percent of hyperopic eyes, and 20/25 or better for 97 percent of the myopic eyes and 94 percent of the hyperopic eyes. This study showed that the polyHEMA lens was safe and effective for daily wear for the correction of myopia in 75 percent of 1,671 patients and for the correction of hyperopia in 66 percent of 146 patients.

Hill (Ref. 23) compared the clinical acceptability of a spin-cast polyHEMA contact lens to that of a lathe-cut polyHEMA contact lens. Ten patients with normal eyes who were successful wearers of spin-cast polyHEMA lenses had one eye refitted with lathe-cut polyHEMA lenses having a diameter of 13.0 mm and standard thickness of 0.12 mm. The refitted eye was randomly chosen to be the right or left eye. Samples of various lots of both lathe-cut and spin-cast lenses were tested by having each patient fitted with five lenses of the same labeled specifications as the best-fitting lens. Patients were objectively and subjectively evaluated with current and refitted lenses. Two types of comparisons were made. Each lens type (lathe-cut versus spin-cast) was compared for reproducibility within that lens type. In addition, the two lens types (lathe-cut versus spin-cast) were compared with each other for clinical acceptability.

In considering reproducibility, all categories (centration, movement, over-refraction, quality of vision, comfort, and clear endpoint refraction) were weighted equally and added. Using this method, 86 percent of the lathe-cut lenses and 71 percent of the spin-cast lenses were found to be clinically equal to or better than the original fitted lens of each type. The lathe-cut lenses showed better reproducibility than the spin-cast lenses in all categories except comfort, where 86 percent of spin-cast lenses and 74 percent of the lathe-cut lenses were equal to or better in comfort, when compared to the original fitted lens of each type.

In comparing the clinical performance of the two lens types, all categories (centration, movement, visual acuity, comfort, and over-refraction) were given weighted values, with larger numbers denoting poorer performance. Lathe-cut lenses performed better clinically in all

categories except comfort; however, the differences between the two lenses were small in all categories including comfort. In this study, lathe-cut polyHEMA contact lenses compared favorably with spin-cast polyHEMA lenses with respect to clinical acceptability and within-lens type reproducibility.

Harris, et al. (Ref. 24), evaluated patient response to each of four different types of hydrogel contact lenses (polyHEMA; HEMA polymer with *N*-(1,1-dimethyl-3-oxobutyl) and acrylamide; HEMA polymer with 1-vinyl-2-pyrrolidinone and methyl methacrylate copolymer; and HEMA polymer with methacrylic acid). Twenty-two normal eyes (11 patients, 7 males and 4 females, with a mean age of 25.9 years \pm 6.6 years) were studied using double-blind procedures. All patients were new wearers of contact lenses. Although some bias may exist in that three subjects using the polyHEMA lenses were eliminated because the lenses would not center properly, there is no reason to believe that those subjects would not have responded as well as the patients who completed the study. The patients wore each of the four different types of lenses in random order for periods of 2 to 3 weeks to evaluate and compare their short-term responses to the lenses. The specifications of the polyHEMA lens included a water content of 38.6 percent, an index of refraction of 1.43, a diameter of 12.5 or 13.6 mm, and center thickness ranging from 0.11 to 0.14 mm. After the response to one lens was evaluated, lens wear was discontinued for several weeks after which the procedure was repeated with another lens type. Successful wear was based on the following research criteria: wearing time of 8 hours or more per day; absence of significant discomfort during wearing period; good quality vision with Snellen acuity close to that achieved with spectacles; normal corneal appearance and physiology with less than 7 percent swelling after 8 hours wear; and eyes that were normal in appearance. A patient was considered successful only if he or she met all five criteria.

For the polyHEMA lenses, 8 of 11 patients (72 percent) were successful wearers. The causes of failure were discomfort (three patients, five eyes), corneal tissue changes (three patients, four eyes), poor vision (two patients, four eyes), and decreased wearing time (one patient, two eyes). The combination of causes of failure for each patient was not stated. The mean corneal thickness changes ranged from 2 to 3 percent after 6 hours of wear. Although these changes were not

statistically significant for the different lens types evaluated, corneal thickening varied directly with lens center thickness for each lens type. In this study, the majority of patients were successfully fitted with the polyHEMA lens, which proved to be safe and effective during the 2- to 3-week evaluation.

Thompson (Ref. 25) studied the response of aphakic patients to three lens types within a series of polyHEMA plus power contact lenses provided by a single manufacturer. All the lenses had a diameter of 13.6 mm, but had different base curves, which were 6.60 mm, 6.40 mm, or 6.20 mm. Of the 36 aphakic eyes in the study, 28 eyes (78 percent) were successfully fitted with 1 of the 3 lens types used. Of the 28 eyes, 12 eyes (43 percent) were fitted with the 6.60 mm lens, 11 eyes (39 percent) with the 6.40 mm lens, and 5 eyes (18 percent) with the 6.20 mm lens. All patients needed a correction from +10.00 to +20.00 diopters. Good lens-cornea alignment and lack of limbal compression indicated a proper fit, which was evaluated according to the following criteria: good centration, acceptable movement, crisp retinoscopic reflex, clear end-point of over-refraction, and stable visual acuity. After 4 weeks of wear, visual acuity was 20/30 or better for 85 percent of eyes, 20/25 or better for 45 percent, and 20/20 or better for 14 percent of the successfully fitted eyes studied. No adverse reactions or positive physical findings in any of the 28 successfully fitted eyes could be attributed to lens wear. This study showed that the availability of three polyHEMA lens types with differing base curves allowed the successful fitting of 78 percent of aphakic eyes with at least one of the lens types.

Josephson and Caffery (Ref. 26) evaluated the use of a polyHEMA ultrathin lens series in refitting patients who had problems with their previous hydrogel lenses. Fifty-seven patients whose lenses caused adverse physiological responses, did not fit properly, produced symptoms such as burning, or caused visual complaints were refitted with the ultrathin series of polyHEMA lenses. The lenses were supplied in diameters of 12 mm or 13.6 mm and had a center thickness of 0.08 mm \pm 0.02 mm. Patients were followed for 6 months. The criteria for successful wear included visual acuity equal to or better than the best correctable spectacle acuity, no adverse physiological response, and no subjective complaints.

Twenty-five of the 57 patients were refitted because of previous adverse

physiological responses such as edema, excess dilatation of limbal microvasculature, epithelial staining, superior corneal irritation, and neovascularization. All 25 patients were successfully refitted with the polyHEMA ultrathin lens. Twenty-six of the 57 patients were refitted because of unacceptable fit with other hydrogel lenses. Of these, 24 patients (92 percent) were fitted successfully with the polyHEMA ultrathin lens. The two unsuccessfully refitted patients continued to have fitting problems because of unacceptable centration. Twenty-seven patients had had unacceptable symptoms with their previous hydrogel lenses. The symptoms included itching, scratching, awareness of lenses, discomfort and irritation, dryness, burning and stinging, halos around lights, and light sensitivity. The symptoms of 18 of these 27 patients (67 percent) were reduced by refitting with the polyHEMA ultrathin lens. The lowest success rate occurred among patients who had had complaints about the vision or visual acuity achieved with their previous lenses. Eleven patients reported symptoms of intermittent blur, increased blurring with longer wear time, and constant lack of crisp visual acuity. Five of the 11 patients (45 percent) had better vision after they were refitted with the ultrathin lens.

Because of the decreased thickness of the ultrathin lens, patients were instructed to handle the lenses in a manner which would reduce damage to the lenses. During the 6-month followup, 22 lenses were damaged. Of these, three were replaced because of surface deposits, and the rest were replaced because the lenses had torn or chipped. Although they were successfully refitted with the ultrathin lens, some patients later reported reduced subjective vision and mild unspecified symptoms. At the conclusion of the study, 44 of the 57 patients (77 percent) were successful wearing the ultrathin lens. Thus, the ultrathin lens proved to be safe and effective and particularly useful in solving fitting and physiological-response problems.

2. *HEMA polymer with methacrylic acid.* In a 3-month clinical trial involving 107 patients (39 females), Jackson (Ref. 27) studied the safety and effectiveness of a lens composed of a copolymer of HEMA with methacrylic acid. Of the 107 patients, 100 were myopic, 3 hyperopic, and 4 astigmatic. Patients with corneal pathology, low tear break-up time, or health problems contraindicating soft contact lens wear were excluded from the study. The criteria used to evaluate lens performance include: fitting

characteristics, visual acuity, physiological response measured by keratometry and biomicroscopy, comfort, wearing time, and durability. The lens studied had a chord diameter of 15.0 mm and a center thickness ranging from 0.10 mm to 0.18 mm for minus power lenses and 0.15 mm to 0.40 mm for plus power lenses. The water content was 60 percent by weight. Standard base curves were 8.8 mm for minus power lenses and 9.0 mm for plus power lenses. All plus power lenses and minus power lenses of -1.50 or more were lenticularized (constructed with a carrier rim surrounding the central optical zone). Of the 107 patients fitted with this lens, 8 discontinued lens wear. The reasons for discontinuance included discomfort (two patients), inability to insert the lens (two patients), decreased tear flow (one patient), insufficient visual acuity (one patient), insufficient durability (one patient), and complications from previous contact lens wear which had not improved (one patient).

Ninety-nine patients (93 percent) were successful wearers. For these patients, visual acuity was similar to that found with other daily wear soft contact lenses. The lenses included in this study were comfortable and caused minimal edge awareness. Most patients were able to wear the lenses for a full day; the patients who were unable to wear the lenses all day achieved a minimum of 12 hours wear per day. In this study, the lens composed of a copolymer of HEMA with methacrylic acid was shown to be safe and effective in a high percentage (93 percent) of patients fitted with the lens.

In the study by Harris, et al. (Ref. 24), described in section IV.B.1. of this preamble, the response of patients to four different types of hydrogel contact lenses was evaluated. The specifications of the lenses composed of a copolymer of HEMA with methacrylic acid included: a water content of 42.5 percent; an index of refraction of 1.43, a diameter of 13.0 mm, and center thickness ranging from 0.12 to 0.22 mm. Of the 11 patients (22 eyes) studied, 7 patients (63 percent) were successfully fitted. The causes of failure of the four unsuccessfully fitted patients included poor vision (three patients, five eyes), corneal tissue changes (two patients, three eyes), decreased wearing time (one patient, two eyes) and discomfort (one patient, two eyes). The combination of causes of failure for each patient was not stated. This lens proved to be safe and effective in the seven successfully fitted patients (63 percent) during the 2- to 3-week evaluation.

3. *HEMA polymer with 1-vinyl-2-pyrrolidinone*. Espy (Ref. 28) evaluated this lens in 100 preselected patients. Patients visiting an eye clinic and desiring soft contact lenses were chosen for the study over a 1-year period. Followup ranged from 3 to 15 months. Of the 100 patients, 74 were females, 26 were males. Eighty-one percent were myopic, 15 percent were hyperopic, and 4 percent were aphakic. They ranged in age from 10 to over 70 years, with 64 percent from 20 to 39 years of age. Although many of the patients were first-time contact lens wearers, some had been unsuccessful wearers of hard or other soft contact lenses. Patients included in the study were limited to those whose lenses fulfilled the following criteria: stability, comfort, maximum visual acuity, extension beyond the limbus no less than 1 mm in all directions, and movement downward 1 to 3 mm during upward gaze on the blink. Patients with more than 2.0 to 2.5 diopters of astigmatism and those who were unable to be fit satisfactorily with trial lenses were excluded from the study. The total number of patients screened was not stated.

The lens used in the study was a lathe-cut spherical lens with a posterior circumferential channel and lenticularized anterior periphery. The water content was 54 percent by weight. When properly fitted, the lens diameter was approximately 2 mm larger than the cornea, thereby extending beyond the limbal area. The lens diameters were 14.0, 14.5, 15.0, 15.5, or 16.0 mm. The base curve was spherical but flatter than the corneal curvature. The lenses were available in powers between +20.00 and -20.00 diopters. All plus powers and high minus lenses required a lenticular configuration because of the large size of the lens. Both standard and thin series of thicknesses were available.

Of the 100 patients fitted with the lens being studied, visual acuity was 20/30 or better for 96 percent, 20/25 or better for 88 percent, and 20/20 or better for 64 percent. No significant change in keratometry readings occurred after wearing the lenses during the period of followup. There were 10 failures, 3 because of poor vision and 7 attributed to lack of motivation to care for the lenses. The lens proved to be safe and effective in 90 percent 100 preselected patients. FDA recognizes that the high degree of success can be attributed to the careful preselection of patients. The agency believes, however, that such preselection is common in clinical practice, and therefore does not detract from the validity of the study.

Binder (Ref. 29) studied the response to extended wear of the lens composed of a copolymer of HEMA with 1-vinyl-2-pyrrolidinone in 20 volunteers with normal eyes who had never worn contact lenses. Each patient had a complete ocular examination, and the right eye was fitted with a thin hydrogel contact lens composed of a copolymer of HEMA with 1-vinyl-2-pyrrolidinone. Patients were followed for 12 weeks. Antibiotic drops were placed on the eye four times a day. The lens used in the study had a diameter of 15.0 to 15.5 mm, center thickness of 0.09 mm, water content of 45 to 54 percent, and refractive index of 1.43. The powers ranged from -0.75 to +0.75 diopter.

Of the 20 patients initially fitted, 17 completed the study. Fourteen were female and 3 were male, with an age range from 19 to 49 years. Two of the three patients who did not complete the study developed ocular symptoms including discomfort after several days of continuous wear. The third patient discontinued the study for reasons unrelated to lens wear. Loss of lenses from the eye ranged from zero to seven times per patient. Lens loss was attributed to forceful blinking after rubbing the eyelids and emotional tearing. Fourteen of the 17 patients developed anterior lens deposits, the earliest occurring at 3 weeks and the latest at 12 weeks. There were no cases of gross corneal edema.

Thirteen patients had visual acuity of 20/20 after 12 weeks. Three patients had a decrease of one line of acuity, and one patient had a decrease of three lines after 12 weeks. Acuity returned to 20/20 in all four patients, 3 weeks after removal of the contact lenses. Fourteen patients had no change in their refractions. Of the three remaining patients, one gained 0.50 diopter of myopia, and two gained 0.75 diopter of myopia. One of the latter patients had a decrease in visual acuity to 20/25. Fifteen patients had no changes in central corneal keratometry readings. Of the two patients showing keratometric changes, one was associated with decreased visual acuity (to 20/40). Three weeks after removal of the lens, visual acuity returned to 20/20. Increased corneal thickness ranging from 0.04 to 0.10 mm occurred in eight patients. After 12 weeks of wear, two patients had decreased visual acuity associated with increased corneal thickness.

The thin continuous-wear lenses used in this study were shown to be safe, effective, and well tolerated in the majority of patients for 12 weeks. Although the contact lenses being proposed for reclassification are limited

to daily wear, FDA believes the results of this extended wear study support the conclusion that the lens composed of a copolymer of HEMA with 1-vinyl-2-pyrrolidinone is safe and effective for daily wear. If a contact lens can safely and effectively be worn on the eye continuously for days, weeks, or months, FDA believes that the same lens can be expected to be safe and effective for daily wear.

FDA believes that the studies discussed in this section show that the hydrogel contact lens composed of a copolymer of HEMA with 1-vinyl-2-pyrrolidinone is safe and effective. The agency recognizes, however, that corneal staining has been documented with the thin series of these lenses. Kline and Deluca (Ref. 30) surveyed 85 patients (170 eyes) selected at random who were wearing hydrogel thin contact lenses of this composition. Seventy-eight percent of the patients were female; 22 percent were male. The mean age was 29 years, with a range from 16 to 56 years of age. Keratometry readings ranged from 40.00 to 47.50 diopters. The lenses worn by these patients ranged in power from -0.75 to -8.50 diopters. Lens diameters were 14.5, 15.0, 15.5, or 16.0 mm. All lenses extended beyond the limbus, at a minimum of 0.75 mm nasally and temporally, and 0.50 mm superiorly and inferiorly in primary gaze. Vertical movement of the lens in the primary gaze ranged from zero to 1.50 mm.

The cornea was examined for staining following 3 hours or more of lens wear and within 5 minutes of lens removal. Of the 170 eyes studied, 55 eyes (32 percent) representing 32 of 85 patients (37.7 percent) showed some degree of pitting stain. Of the eyes studies, 36 eyes (21 percent) showed light staining; 10 eyes (6 percent) showed moderate staining, and 9 eyes (5 percent) showed heavy corneal staining. Thirty-six percent of males and 31 percent of females had staining. Symptoms of burning, pain, and redness were present in seven eyes (one with moderate staining and six with heavy staining). All patients with light staining were asymptomatic. The degree of staining was correlated with keratometry readings and several lens parameters. Some parameters, e.g., steeper fit and lower power, indicated a greater incidence of staining; however, no statistically significant correlations were found. Because the results of this study did not show conclusively a definite cause of staining, it was suggested that the staining may be mechanical in nature, caused by the posterior lens surface rubbing against the cornea. Most of the lenses used in

the study had steep base curves (9.2 mm and 9.5 mm) manufactured with a posterior circumferential channel. Because the staining occurred primarily in the region of the channel and the lens level, it was suggested that flatter nonchannel lenses be fitted. The authors note that they have observed a reduced incidence of staining when they initially fitted patients with flatter nonchannel lenses and, in some cases, refitting with these lenses eliminated corneal staining. FDA believes that the possibility of corneal staining presented by the thin series of the hydrogel lens composed of a copolymer of HEMA with 1-vinyl-2-pyrrolidinone does not raise any significant safety concerns, and is, therefore, proposing to reclassify all such currently marketed hydrogel contact lenses.

4. *HEMA polymer with 1-vinyl-2-pyrrolidinone and methacrylic acid.* Stark and Martin (Ref. 31) have studied the long-term effects of an extended wear contact lens made from this terpolymer and used for the correction of myopia. The water content of the lens was 71 percent. The myopic powers ranged from -0.50 to -18.00 diopters. Diameters ranged from 12.0 to 14.0 mm. Oxygen permeability ranged from 67 percent to 38 percent and varied indirectly with the central thickness (0.10 mm to 0.43 mm).

The 207 eyes of 106 patients who had successfully worn the lens for 4 to 8 years (median, 4.94 years) were evaluated. A total of 346 patients had been fitted with the lens for myopia over a 4-year period. Of these 346 patients, 172 patients (50 percent) previously had been examined by practitioners and were known to be successfully wearing contact lenses. Of these 172 patients, 106 agreed to participate in the study. Eighty-seven (25 percent) of the initially fitted 346 patients discontinued lens wear. Fifty-seven patients (16 percent) discontinued using the lens for nonmedical reasons and 30 patients (9 percent) discontinued using the lens for lens-related reasons. Of the 106 patients studied, 72 were female and 34 were male. The ages ranged from 18 to 73 years with a mean age of 34.3 years. All patients except one wore the lens continuously for at least 2 months. One patient removed the lens for cleaning every 4 weeks. Forty of the 106 patients wore the lens continuously for 6 months or more.

With the contact lens in place, visual acuity was 20/30 or better in 82.1 percent of 207 eyes (106 patients) and 20/40 or better in 95.2 percent of the eyes. Ten eyes (4.8 percent) had visual acuity less than 20/40. Of the 10 eyes, 1

had macular degeneration, 1 was amblyopic, and 3 had astigmatism greater than 1 diopter. Twenty-seven of the 106 patients (13 percent) showed abnormal physiological findings. Neovascularization with vessels extending more than 1.5 mm in from the limbus occurred in 18 patients (9 percent); mild punctate corneal staining occurred in 7 patients (3 percent) and mild conjunctival injection occurred in 2 patients (1 percent). There were no cases of corneal edema or apical corneal scarring.

A chart review of 153 patients known to be successful wearers of the lens but who did not return for examination to participate in the study, revealed 5 of 153 patients who developed conjunctivitis. There were no reported cases of corneal scarring or visual loss. Of the 30 patients who discontinued lens wear for lens-related reasons out of a total of 346 studied retrospectively, 25 patients (83.3 percent) developed conjunctivitis, generally of the follicular type. Corneal abrasion developed in 4 of the 30 patients and sterile punctate keratitis developed in 1 of the 30 patients. No complications resulted in reduced visual acuity. Lens replacement averaged 0.68 lens per patient per year and was not a factor in patients who discontinued lens use. Thus, the results of this study show that this lens was safe and effective for extended wear use in the correction of myopia. FDA believes that the results of this extended wear study support the conclusion that the lens composed of a terpolymer of HEMA with 1-vinyl-2-pyrrolidinone and methacrylic acid is safe and effective for daily wear.

In the Study by Cavanagh, et al. (Ref. 32), also described in section IV. B.7., the safety and effectiveness of an extended wear hydrogel contact lens composed of a terpolymer of HEMA with 1-vinyl-2-pyrrolidinone and methacrylic acid was evaluated. The patients included in the study were referred by ophthalmologists for extended wear aphakic contact lenses under FDA approved clinical trial protocols and local institutional reviews for human subjects. Ninety-two eyes of 78 patients (42 female, 36 male) were fitted with the lens. The patients, who ranged in age from 48 to 86 years, were followed from 1 to 3 years. The research criteria used to assess successful wear included corrected visual acuity, absence of subjective discomfort or complaint, and absence of abnormalities including vascular congestion or ingrowth, corneal edema, infection, and iritis.

Excluding patients known to be wearing the lens comfortably but unable to keep followup appointments, 54 of 66 patients (82 percent) were successful wearers of the lens. Twelve patients were discontinued due to lens loss, lens movement, or unsatisfactory vision. In 90 percent of eyes fitted, the lens was worn continuously for 3 months or more, followed by removal of the lens for cleaning. In 10 percent of eyes fitted, the lens was worn continuously less than 3 months and in 5 percent the lens was worn continuously less than 1 month. Lens replacement averaged one lens every 2 years for one-half of the eyes fitted. The study showed that this hydrogel lens was safe and effective for extended wear use in aphakic patients who were carefully selected, fitted, educated, and followed. FDA believes that the results of this study support the conclusion that daily wear use of this lens is safe and effective.

5. *HEMA polymer with 1-vinyl-2-pyrrolidinone and methyl methacrylate.* Koetting (Ref. 33) studied this lens in a 6-month clinical trial in 59 patients (114 eyes) randomly selected from an optometric contact lens practice. The lens had a water content of 42.5 percent. Lens power ranged from plano to -9.75 diopters. Diameter was 13.0 mm. Central thickness ranged from 0.12 mm to 0.22 mm. Fifty-three percent of the patients had been previously unsuccessful with PMMA or other hydrogel contact lens wear; 10 percent of the patients reported previous successful lens wear. Only those patients who refused to participate or who required lenses beyond the available range were excluded from the study. Of the 59 patients studied, 39 were female, and 20 were male. The ages ranged from 18 to 42 years with a mean age of 24.8 years. Uncorrected visual acuity ranged from 20/30 to worse than 20/400 with 95 percent worse than 20/60.

Of the 114 eyes studied, 10 eyes were excluded from visual acuity percentages because of undefined "unusual monocular situations." Eighty-six of 104 eyes (83 percent) were corrected to 20/20 and 98 of 104 eyes (94 percent) were corrected to 20/30 or better. Thirty-nine of 59 patients (66 percent) continued lens wear for an average of 14.1 hours a day by the conclusion of the study. Only 11 patients (18 percent) withdrew for reasons of acuity or discomfort. No significant physiological abnormalities were associated with lens wear. Transitory symptoms of mild injection (5 percent of patients) and mild corneal edema (37 percent of patients) occurred during the first week of lens wear but subsequently disappeared. The lens

used in this study was shown to be safe and effective for the majority of patients evaluated.

This lens type was included in the study conducted by Harris, et al. (Ref. 24) (see section IV.B.1.), to evaluate short-term patient response to four different hydrogel lenses. The lens composed of a terpolymer of HEMA with 1-vinyl-2-pyrrolidinone and methyl methacrylate had a water content of 45 percent. The index of refraction was 1.43; the diameters were 15.0, 15.5, or 16.0 mm; and the center thickness ranged from 0.12 to 0.22 mm. Of 11 patients studied, 7 patients wore this lens type successfully. The causes of failure were discomfort (two patients, four eyes), corneal tissue changes (two patients, two eyes), poor vision (one patient, two eyes), and decreased wearing time (one patient, two eyes). The combination of causes of failure for each patient was not stated. For the 2- to 3-week evaluation of short-term patient response, the lens was shown to be safe and effective for 7 patients (63 percent of the 11 patients studied).

6. *HEMA polymer with N-(1,1-dimethyl-3-oxobutyl)-acrylamide.* Binder and Woodward (Ref. 34) compared this lens, which is moderately hydrophilic, to a highly hydrophilic hydrogel contact lens for extended wear correction of myopia and aphakia. (The highly hydrophilic lens is discussed in section IV.B.7.) The lens was available with an equilibrium water content of 45 percent and 55 percent. Of 64 patients originally referred for the fitting of extended wear contact lenses, 43 (70 eyes) were studied. Of the 70 eyes, 56 were fitted with the moderately hydrophilic lens; 32 were myopic, and 24 were aphakic. The lenses were removed weekly for cleaning, following the manufacturer's protocol. Followup ranged from 2 to 20 months. Patients who were able to wear the lenses continuously for more than 2 weeks while maintaining their best corrected visual acuity were considered successful. Of the 56 eyes fitted with this lens, 45 eyes (80 percent) were fitted successfully and 11 eyes (20 percent) were discontinued from the study. The reasons for discontinuance included lack of patient motivation, ocular irritation, and corneal edema. Various lens parameters and patient factors were analyzed to determine trends associated with failures; however, no statistically significant associations were found. Analysis of the corrected visual acuity revealed that 100 percent of eyes studied achieved visual acuity of 20/40 or better; 91 percent achieved visual acuity of 20/30 or better.

An average of 2.8 lens changes per eye per year were required during the study to maintain best corrected visual acuity. The reasons for lens changes included lens chipping, lens tearing, lens deposits, lens loss, and refractive error changes unassociated with changes in corneal curvature or thickness. Eighty percent of these changes occurred in the first 2 months of lens wear. Although lens deposits were the most frequent complication in the series, only 6 of 198 lens changes were caused by deposits. Two myopic eyes became congested and 4 developed redness consistent with adenoviral keratoconjunctivitis. Viral cultures were negative and symptoms cleared after removal of the lens. Preservatives in the disinfection solutions were suspected to cause these reactions. No other adverse reactions associated with the use of accessories were reported.

The moderately hydrophilic contact lens used in this study for extended wear was shown to be safe and effective in 80 percent of eyes studied. The importance of careful patient selection and frequent, careful followup examinations was repeatedly stressed as a prerequisite to a high success rate. FDA believes that the results of this extended wear study support the conclusion that this lens is safe and effective for daily wear.

In the study by Harris, et al. (Ref. 24) (see section IV.B.1.), short-term patient response to four different hydrogel contact lenses, including the lens composed of a copolymer of HEMA with *N*-(1,1-dimethyl-3-oxobutyl)acrylamide was evaluated. These lenses had a water content of 45 percent; an index of refraction of 1.43; diameters of 15.0, 15.5, or 16.0 mm; and a center thickness ranging from 0.04 to 0.08 mm. Of the 11 patients (22 eyes) studied, 7 patients (63 percent) were successfully fitted with this lens. The causes of failure included corneal tissue changes (three patients, five eyes), discomfort (two patients, four eyes), and decreased wearing time (two patients, four eyes). The combination of causes of failure for each patient was not stated. For the 2- to 3-week evaluation of short-term patient response, the lens was shown to be safe and effective for 7 patients (63 percent of the 11 patients studied).

7. *1-Vinyl-2-pyrrolidinone polymer with methyl methacrylate and allyl methacrylate.* In the long-term study discussed in section IV.B.4., Cavanagh, et al. (Ref. 32), evaluated the effectiveness of several extended wear hydrogel lenses, including a lens composed of a terpolymer of 1-vinyl-2-pyrrolidinone with methyl methacrylate

and allyl methacrylate. One hundred eighty-two patients (250 aphakic eyes) were fitted with this lens type over a 19-month period. Of these, 154 patients (221 eyes) were wearing contact lenses at the conclusion of the study. The data collected on the first 168 patients (241 eyes) were subjected to computer analysis. In this group, 211 eyes (146 patients) were successful and 30 eyes (22 patients) were discontinued. Fifty-three percent of the failures occurred in the first 4 weeks and 87 percent had failed by 12 weeks. No failures occurred in this group after 6 months. Forty-one percent of patients and 36 percent of eyes had lenses replaced within a 1-year period. Lens replacements were due to lens loss, lens damage (cracking), discomfort, and inadequate optical lens power. Lens deposits occurred in 11 percent of patients fitted. Poor motivation for followup visits (10 patients), fitting problems (8 patients), and unacceptable visual acuity (4 patients) accounted for 22 failures. The only adverse responses included mild ocular irritation which ceased after lens removal. Thirteen percent of the patients needed to remove the lens for cleaning at intervals of less than 3 months; 6 percent of the patients at intervals of less than 1 month. The results of this study show that the extended wear use of this lens for over 80 percent of aphakic patients fitted was safe and effective. FDA believes that the results of this study support the conclusion that daily wear use of this lens is safe and effective.

In the study by Binder and Woodward (Ref. 34) discussed in section IV.B.6., this lens, which is highly hydrophilic, was compared to a moderately hydrophilic hydrogel contact lens for extended wear correction of myopia and aphakia. The lens composed of a terpolymer of 1-vinyl-2-pyrrolidinone with methyl methacrylate and allyl methacrylate had a water content of 79 percent. Patients were considered successfully fitted if they maintained their best corrected visual acuity while wearing the lens continuously for more than 2 weeks. Only two myopic patients were fitted with this lens and both were successful. Nine of 12 aphakic patients (75 percent) were successfully fitted. Of the three failures, two patients who developed edema with the moderately hydrophilic lens used in this study also developed edema with the highly hydrophilic lens. These patients were successfully switched to daily wear lenses. One patient initially fitted with the high water content contact lens experienced decreased visual acuity and corneal edema and was successfully switched to

a daily wear PMMA contact lens. This study showed that in patients who were carefully selected, fitted, and followed, the highly hydrophilic lens was safe and effective for the correction of aphakia in 75 percent of 12 patients and myopia in 100 percent of 2 patients.

Reported disadvantages of all hydrogel contact lenses included dehydration, spoilage, and bacterial contamination. The importance of adequate hydration of hydrogel contact lenses is repeatedly stressed in the literature and is discussed in detail throughout this section. Fungal infiltration is rare (Ref. 35). Such infection has been known to occur in cases of inadequate disinfection, which, by inference, is also rare. Spoilage or deterioration of hydrogel lenses due to extraneous lens deposits, physical and chemical changes in the lens materials, or microbial invasion necessitates more frequent replacement of hydrogel lenses than rigid contact lenses (Refs. 36 through 39). FDA believes that this aspect of soft contact lens use is a factor to be considered when deciding whether to use the device. The inclusion in labeling of information about spoilage or deterioration of hydrogel lenses can be assured by the general controls provisions of the act. FDA believes that the higher level of lens replacement among hydrogel users is acceptable when balanced against the improved comfort and other factors discussed in this section of the preamble.

V. Risks to Health

The risks associated with the use of the device include: (1) Corneal infection that may result from lens or lens care solution contamination; (2) corneal abrasion that may occur from a torn lens or poor lens design or fit; (3) corneal edema that may occur if lens material or design prevents adequate delivery of oxygen to the cornea; (4) corneal vascularization that may result from inflammation or as a result of corneal edema; (5) corneal damage that may result from wearing a lens that has been soaked in a solution that is intended for use with conventional (hard) contact lenses and that should not be used with hydrogel contact lenses; (6) eye irritation from short-term exposure of a hypertonic lens; (7) excessive tearing, unusual eye secretions, and photophobia that may occur as a result of lens wear, the exact cause of which would have to be determined from patient examination; and (8) giant papillary conjunctivitis, the exact cause of which is unknown.

VI. Public Comment

FDA invites comments on all aspects of the proposal, but particularly on the following issues:

1. Do the data presented in this proposal constitute sufficient "valid scientific evidence" of safety and effectiveness to support reclassification of each of the seven marketed hydrogel lenses identified in the proposed regulation? FDA especially is interested in the sufficiency of the clinical data presented for the lathe-cut polyHEMA lens, the ultrathin series of the polyHEMA lens, the HEMA polymer with methacrylic acid lens, the thin series of the HEMA polymer with 1-vinyl-2-pyrrolidinone lens, the HEMA polymer with 1-vinyl-2-pyrrolidinone and methyl methacrylate lens, and the HEMA polymer *N*-(1,1-dimethyl-3-oxobutyl)acrylamide lens.

a. If not, what additional publicly available data are there to support reclassification?

b. If so, are general controls sufficient to provide reasonable assurance of the safety and effectiveness of the device?

c. If general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the device, is there sufficient information to establish a performance standard to provide such assurance?

d. If general controls are not sufficient, and there is sufficient information to establish a performance standard to provide reasonable assurance of safety and effectiveness of the device, is a performance standard necessary to assure any of the lens properties or design characteristics that FDA has identified as "clinically significant" (see section III of the preamble) or to protect against any of the concerns raised in the 1975 notice declaring as new drugs all contact lenses consisting of polymers other than PMMA (see section I.B. of the preamble)?

e. Should any reclassification take effect (i) before or (ii) after such a standard has been established?

2. Is there publicly available "valid scientific evidence" to support reclassification of other than daily wear spherical hydrogel lenses? For example, should (a) extended wear lenses, (b) toric lenses, or (c) other types of hydrogel lenses be included in any reclassification? If so, what publicly available data are there to support reclassification of such other lenses?

3. With respect to a number of the lenses proposed for reclassification, FDA has limited data on their use for the correction of hyperopia and in some cases aphakia. May FDA reclassify a

lens for use in the correction of myopia, hyperopia, and aphakia based solely or primarily on data showing that the lens is safe and effective (a) for the correction of myopia? (b) for the correction of myopia and aphakia?

4. Does specifying the materials of which the lenses proposed for reclassification are principally composed adequately identify the lenses for the purpose of reclassification?

5. As discussed in sections III and IV of the preamble, the safety or effectiveness of a specific hydrogel contact lens is affected by its specific composition, design, and various other clinically significant properties.

a. Do the data presented in this proposal provide sufficient "valid scientific evidence" of the safety and effectiveness of lenses of any specific composition, design, or other characteristic?

b. If the data do not provide this evidence, may the identified lenses be reclassified because of FDA's tentative decision that the safety and effectiveness of composition, design, and other clinically significant properties of specific lenses can be assured through premarket notification submissions and substantial equivalence determinations?

6. Is there publicly available "valid scientific evidence" to support reclassification of hydrogel (soft) contact lens accessories, including products for cleaning, disinfecting, wetting, and storage? If so, what publicly available data are there to support reclassification of such accessories?

VII. Economic Impact

As discussed in section I. of this proposal, in the November 24, 1981 notice of intent FDA invited public comment on the economic impact of any reclassification of daily wear spherical hydrogel (soft) contact lenses. Although none of the comments presented specific data on the economic impact, generally the comments from all groups stated that reclassification would benefit industry and consumers by enabling small firms to have access to newer and better contact lens materials. Thus, competition would increase, costs would decrease, and employment would increase in these small firms. Also, comments generally stated that the contact lens reclassification would allow small contact lens manufacturing firms to compete in the world market.

All future manufacturers of the reclassified devices would be relieved of the cost of complying with the premarket approval requirements in

section 515 of the act. FDA recognizes that there may be an economic impact on manufacturers marketing devices that are the subject of PMA's and that would be reclassified if this proposal were adopted and invites comment regarding any such impact. The magnitude of the economic savings for manufacturers resulting from any reclassification would depend on the extent of premarket approval studies that industry would have conducted had these requirements remained in effect. This parameter cannot be reliably calculated to permit the quantification of the economic savings. Do any manufacturers or other interested persons have additional data on the economic impact of reclassification?

After considering the economic consequences of reclassifying the device as discussed above, FDA certifies that this proposal requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354).

VIII. References

The following materials are on file in the Dockets Management Branch (address above) where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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22. Knoll, H. A. and L. D. Clements, "The Hydrophilic Contact Lens: A Clinical Study," *Journal of the American Optometric Association*, Vol. 43(3), March 1972, pp. 269-274.
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List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 886 (which was proposed in the Federal Register of January 26, 1982 (47 FR 3694)) by adding new § 886.5380, to read as follows:

PART 886—OPHTHALMIC DEVICES

§ 886.5380 Daily wear spherical hydrogel (soft) contact lens.

(a) *Identification.* A daily wear spherical hydrogel (soft) contact lens is a device that is a curved shell with an

optically spherical surface providing monofocal refraction to be worn by a patient directly on the globe or cornea of the eye to correct refractive errors and that is removed from the eye and cleaned daily. A lens subject to this section is composed only of the following materials and is limited to any daily wear optically spherical hydrogel (soft) contact lens in commercial distribution as of the effective date of this regulation or a lens that is determined by FDA to be substantially equivalent:

(1) Poly(2-hydroxyethyl methacrylate) (the polymer made from monomeric 2-hydroxyethyl methacrylate);

(2) 2-Hydroxyethyl methacrylate polymer with methacrylic acid;

(3) 2-Hydroxyethyl methacrylate polymer with 1-vinyl-2-pyrrolidinone;

(4) 2-Hydroxyethyl methacrylate polymer with 1-vinyl-2-pyrrolidinone and methacrylic acid;

(5) 2-Hydroxyethyl methacrylate polymer with 1-vinyl-2-pyrrolidinone and methyl methacrylate;

(6) 2-Hydroxyethyl methacrylate polymer with *N*-(1,1-dimethyl-3-oxobutyl)acrylamide; or

(7) 1-Vinyl-2-pyrrolidinone polymer with methyl methacrylate and allyl methacrylate.

These materials are polymerized with free radical initiators and cross-linked with one of the following: (i) Divinylbenzene; (ii) 1,3-propanediol trimethacrylate; or (iii) dimethacrylate that contains ethylene or ethylene glycol units.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before December 27, 1982, submit to the Dockets Management Branch (address above) written comments on this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 1982.

Arthur Hull Hayes, Jr.,
Commissioner of Food and Drugs.

[FR Doc. 82-32333 Filed 11-24-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 09 82-25]

Drawbridge Operation Regulations; Keweenaw Waterway, Michigan

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Michigan Department of Transportation, the Coast Guard is considering revising the regulations governing the operation of the (U.S.-41) highway and Soo Line Railroad bridge, mile 10.0, over the Keweenaw Waterway between the Cities of Houghton and Hancock, Houghton County, Michigan, by permitting the Michigan Department of Transportation to remove drawtenders between the hours of 11 p.m. and 7 a.m. during the navigation season. During this period of time the draw would be required to open on signal if at least a one hour notice is given. Also, the present schedule requiring at least a 24 hour notice to have the draw open for the passage of a vessel during the winter months, January 1 through March 15, would be extended to April 15. This change is being considered because of the small amount of openings during these periods of time.

DATE: Comments must be received on or before January 10, 1983.

ADDRESS: Comments should be submitted to and are available for examination, during normal business hours, at the office of the Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199.

FOR FURTHER INFORMATION CONTACT:

Robert W. Bloom, Jr., Chief, Bridge Branch, United States Coast Guard, 1240 East Ninth Street, Cleveland, Ohio 44199, (216-522-3993).

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

The Commander, Ninth Coast Guard District, will evaluate all

communications received and determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting instructions: The principal persons involved in drafting this proposal are: Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, and LCDR J. A. Blocher, Assistant Legal Officer, Ninth Coast Guard District.

Discussion of Proposed Regulations

Records of openings for the draw of this bridge from 11 p.m. to 7 a.m. for the period April through December are as follows:

	1978	1979	980
April	0	0	1
May	3	5	2
June	3	6	3
July	6	18	10
August	6	25	6
September	4	6	4
October	5	1	0
November	1	2	1
December	1	1	1

Under present regulations the draw is required to open on signal from March 16 to December 31. From January 1 to March 15, at least a 24 hour advance notice is required to have the bridge open for the passage of a vessel.

The proposed regulations would relieve the bridge owner of having a bridgetender on duty during periods when navigation on the Keweenaw Waterway is negligible. A one hour notice would be required between the hours of 11 p.m. and 7 a.m. from April 16 to December 31. From January 1 to April 15, the bridge would be required to open on signal if at least a 24 hour notice is given.

The proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in Policies and Procedures for Simplifications, Analysis and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since its impact is expected to be minimal.

In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule, if

promulgated, will not have a significant economic pact on a substantial number of small entities. The effects of this proposal, as described above, are expected to be minimal because of the low volume of marine traffic between 11 p.m. and 7 a.m., and the ability of the bridge owner to have a bridgetender at the bridge within one hour after being notified that a vessel wishes to pass through the draw.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.642 to read as follows:

§ 117.642 Keweenaw Waterway, Mich.; Michigan State (U.S.-41) Highway Department bridge between Houghton and Hancock.

(a) From April 16 to December 31, between the hours of 7 a.m. and 11 p.m. the draw shall open on signal. From 11 p.m. to 7 a.m. the draw shall open on signal if at least one hour notice is given.

(b) From January 1 to April 15 the draw shall open on signal if at least 24 hours notice is given.

(c) Public vessels of the United States, state or local government vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of this bridge as soon as possible at any time.

(d) The owner of or agency controlling this bridge shall keep a copy of these regulations conspicuously posted both upstream and downstream, either on the bridge or elsewhere in such a manner that it can be easily read from an approaching vessel at all times, with instructions stating exactly how notice is to be given to the authorized representative of the bridge owner during the unattended periods stated in (a) and (b) of this section.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: October 8, 1982.

Henry H. Bell,

*Rear Admiral, Coast Guard, Commander,
Ninth Coast Guard District.*

[FR Doc. 82-32465 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 204

Pacific Ocean Between Point Sal and Point Conception, California; Danger Zone

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulation which established danger zones in the Pacific Ocean near Vandenberg Air Force Base (VAFB), California. This amendment, if approved, will renumber all the danger zones, relocate some of the existing interior boundaries and add some restrictions to a sensitive danger zone. This will cause a decrease in the total number of danger zones from eleven to nine, with no changes in the perimeter of the existing danger zones.

DATE: Comments must be received on or before December 27, 1982.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clark at (213) 688-5606 or Mr. Ralph T. Eppard at (202) 272-0200.

SUPPLEMENTARY INFORMATION: Regulations were promulgated under 33 CFR 204.202 and 204.202a on 11 October 1960 and 28 May 1971, respectively, to govern the use and navigation of danger zones located in the Pacific Ocean between Point Sal and Point Conception, Santa Barbara County, California. These danger zones were established to meet security requirements of the Western Space and Missile Center (WSMC) at Vandenberg AFB and exceptional hazards to persons and property due to missile launches and related activities. Regulations 33 CFR 204.202 and 204.202a were combined in one regulation 204.202 on 2 October 1981.

At the request of the Air Force we are proposing the following amendments:

1. Remove the three-mile radius Danger Zone 8 at Purisima Point. Sensitive missile programs formerly launched from the Purisima Point area have been transferred to South Vandenberg AFB.

2. Create a new and larger Danger Zone 4 by deleting the boundary between old Danger Zone 3 and 4 and moving the boundary between old Danger Zones 4 and 5 to the mouth of the Santa Ynez River. The shifting of sensitive launchings to the South Vandenberg AFB has caused the area between Point Arguello and the mouth of the Santa Ynez River to now require more stringent security measures.

3. Add a new § 204.202(b) which prohibits the stopping or loitering of vessels within zone 4 unless prior permission is obtained from the Commander, Western Space and Missile Center (WSMC), at Vandenberg AFB. The shifting of sensitive launchings to the South Vandenberg AFB has caused the area between Point Arguello and the mouth of the Santa Ynez River to now require more stringent security measures.

4. Renumber the Danger Zones from north to south from one (1) through nine (9). The original Danger Zones were numbered one (1) through eight (8) from south to north starting at a point near Jalama Beach Park. Danger Zones nine (9), ten (10), and eleven (11) were added a few years later and renumbered from north to south. Since the Danger Zone regulations have been combined and the zones realigned for visual references, it will be easier for fishermen, small craft operators, and Air Force staff members to recognize the Danger Zone position by a number reference.

Accordingly, we propose to amend 33 CFR 204.202 by changing paragraphs (a)(2) (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), and removing (x) and (xi), add a subsection to (b) which will be numbered (2) and renumbering the subsection in paragraph (b). For clarity Section 204.202 is reprinted below in its entirety.

Note.—The Corps of Engineers has determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under EO 12044, "Improving Government Regulations." The Corps of Engineers has also determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to the proposed rule change.

PART 204—[AMENDED]

List of Subjects in 33 CFR Part 204

Intergovernmental relations, Waterways, Communications, Marine safety.

Accordingly, § 204.202 is proposed to be revised to read as follows:

§ 204.202 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, California; danger zones.

(a) *The area.* (1) The waters of the Pacific Ocean in an area extending seaward from the shoreline a distance of about three nautical miles and basically outlined as follows:

Station	Latitude	Longitude
Point Sal.....	34°54'08"	120°40'15"
1	34°54'08"	120°44'00"
2	34°52'48"	120°44'00"
3	34°50'00"	120°40'30"
4	34°44'50"	120°42'15"

Station	Latitude	Longitude
5	34°41'50"	120°40'12"
6	34°35'12"	120°42'45"
7	34°33'00"	120°41'05"
8	34°30'40"	120°37'29"
9	34°30'40"	120°30'10"
10	34°30'40"	120°37'29"
11	34°24'18"	120°30'00"
12	34°23'34"	120°27'05"
13	34°24'21"	120°24'40"
14	34°27'20"	120°24'40"
Point Sal	34°54'08"	120°40'15"

(2) The danger area described in paragraph (a)(1) of this section will be divided into zones in order that certain firing tests and operations, whose characteristics as to range and reliability permit, may be conducted without requiring complete evacuation of the entire area. These zones are described as follows:

(i) *Zone 1.* An area extending seaward about three nautical miles from the shoreline beginning at Point Sal latitude 34°54'08", longitude 120°40'15"; thence due west to latitude 34°54'08", longitude 120°44'00"; thence to latitude 34°52'48", longitude 120°44'00"; thence latitude 34°50'00", longitude 120°40'30"; thence due east to the shoreline at latitude 34°50'00", longitude 120°35'30".

(ii) *Zone 2.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°50'00", longitude 120°36'30"; thence due west to latitude 34°50'00", longitude 120°40'30"; thence to latitude 34°45'28", longitude 120°42'05"; thence due east to the shoreline at Purisima Point latitude 34°45'28", longitude 120°38'15".

(iii) *Zone 3.* An area extending seaward about three nautical miles from the shoreline beginning at Purisima Point latitude 34°45'28", longitude 120°38'15"; thence due west to latitude 34°45'28", longitude 120°42'05"; thence to latitude 34°44'50", longitude 120°42'15"; thence to latitude 34°41'50", longitude 120°40'12"; thence due east to the shoreline at the mouth of the Santa Ynez River latitude 34°41'50", longitude 120°36'20".

(iv) *Zone 4.* An area extending seaward about three nautical miles from the shoreline beginning at the mouth of the Santa Ynez River latitude 34°41'50", longitude 120°36'20"; thence due west to latitude 34°41'50", longitude 120°40'12"; thence to latitude 34°35'12", longitude 120°42'45"; thence latitude 34°34'32", longitude 120°42'30"; thence due east to the shoreline at Point Arguello latitude 34°34'32", longitude 120°39'03".

(v) *Zone 5.* An area extending seaward about three nautical miles from the shoreline beginning at Point Arguello latitude 34°34'32", longitude 120°39'03"; thence due west to latitude 34°34'32", longitude 120°42'30"; thence to latitude 34°33'00", longitude 120°41'05"; thence to

latitude 34°30'40", longitude 120°37'29"; thence due north to the shoreline at latitude 34°33'15", longitude 120°37'29".

(vi) *Zone 6.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°33'15", longitude 120°37'29"; thence due south to latitude 34°30'40", longitude 120°37'29"; thence due east to the shoreline at latitude 34°30'40", longitude 120°30'10".

(vii) *Zone 7.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°30'40", longitude 120°30'10"; thence due west to latitude 34°30'40", longitude 120°37'29"; thence to latitude 34°26'56", longitude 120°33'06"; thence due east to the shoreline at Point Conception latitude 34°26'56", longitude 120°28'10".

(viii) *Zone 8.* An area extending seaward about three nautical miles from the shoreline beginning at Point Conception latitude 34°26'56", longitude 120°28'10"; thence due west to latitude 34°26'56", longitude 120°33'06"; thence to latitude 34°24'18", longitude 120°30'00"; thence to latitude 34°23'34", longitude 120°27'05"; thence shoreward to Point Conception latitude 34°26'56", longitude 120°28'10".

(ix) *Zone 9.* An area extending seaward about three nautical miles from the shoreline beginning at Point Conception latitude 34°26'56", longitude 120°28'10"; thence seaward to latitude 34°23'34", longitude 120°27'05"; thence to latitude 34°24'21", longitude 120°24'40"; thence due north to the shoreline at latitude 34°27'20", longitude 120°24'40".

(b) *The regulation.* (1) Except as prescribed in this section or in other regulations, danger zones will be open to fishing, location of fixed or movable oil drilling platforms and general navigation without restrictions.

(2) The stopping or loitering of vessels is expressly prohibited within Danger Zone 1, between the mouth of the Santa Ynez River and Point Arguello, unless prior permission is obtained from the Commander, Western Space and Missile Center (WSMC) at Vandenberg AFB, CA.

(3) The impacting of missile debris from launch operations will take place in any one or any group of zones in the danger areas at frequent and irregular intervals throughout the year. The Commander, WSMC, will announce in advance, the closure of zones hazarded by missile debris impact. Such advance announcements will appear in the weekly "Notice to Mariners." For the benefit of fishermen, small craft operators and drilling platform operators, announcements will also be made on radio frequency 2182 kc, 2638 kc, VHF channel 6 (156.30 MHz), VHF

channel 12 (156.60 MHz), and VHF channel 16 (156.80 MHz) for daily announcements. Additionally, information will be posted on notice boards located outside Port Control Offices (Harbormasters) at Morro Harbors, and any established harbor of refuge between Santa Barbara and Morro Bay.

(4) All fishing boats, other small craft, drilling platforms and shipping vessels with radios are requested to monitor radio frequency 2182 kc, 2638 kc, VHF channel 6 (156.30 MHz), VHF channel 12 (156.60 MHz), or channel 16 (156.80 MHz) while in these zones for daily announcements of zone closures.

(5) When a scheduled launch operation is about to begin, radio broadcast notifications will be made periodically, starting at least 24 hours in advance. Additional contact may be made by surface patrol boats or aircraft equipped with a loudspeaker system. When so notified, all vessels shall leave the specified zone or zones immediately by the shortest route.

(6) The Commander, WSMC, will extend full cooperation relating to the public use of the danger area and will fully consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

(7) Where an established harbor of refuge exists, small craft may take shelter for the duration of zone closure.

(8) Fixed or movable oil drilling platforms located in zones identified as hazardous and closed in accordance with this regulation shall cease operations for the duration of the zone closure. The zones shall be closed continuously no longer than 72 hours at any one time. Such notice to evacuate personnel shall be accomplished in accordance with procedure as established between the Commander WSMC and the oil industry in the adjacent waters of the Outer Continental Shelf.

(9) No seaplanes, other than those approved by the Commander, WSMC, may enter the danger zones during launch closure periods.

(10) The regulations in this section shall be enforced by personnel attached to WSMC and by such other agencies as may be designated by the Commander, WSMC.

(11) The regulations in this section shall be in effect until further notice. They shall be reviewed again during September 1987.

Authority: (33 U.S.C. 1, 3)

Dated: November 15, 1982.

Approved:

Paul F. Kavanaugh,
Colonel, Corps of Engineers, Executive
Director of Civil Works.

[FR Doc. 82-32452 Filed 11-24-82; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Great Smoky Mountains National Park; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking will revise 36 CFR 7.14 by streamlining fishing regulations to reflect different creel limits, sizes, bait restrictions and season length in park streams. The changes are necessary based on new biological data available, outdated management programs, and visitor complaints on the complexity of current regulations. The changes will simplify, liberalize and bring park fishing regulations in line with current National Park Service policy.

DATE: Written comments, suggestions or objections will be accepted until December 27, 1982.

ADDRESS: Comments should be directed to: Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738.

FOR FURTHER INFORMATION CONTACT: Merrill D. Beal, Superintendent, Great Smoky Mountains National Park, Telephone (615) 436-5615.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service has the dual mission of protecting species in a natural ecosystem and providing recreational fishing opportunities to the public when such an activity will leave park resources "unimpaired for the enjoyment of future generations." 16 U.S.C. 1.

Great Smoky Mountains National Park has permitted recreational fishing since its establishment in the mid-1930's. Rainbow trout, an exotic species, was introduced into the Southern Appalachians region at the turn of the century in conjunction with logging operations. The rainbow trout has successfully precluded the recolonization of lost habitat by the native brook trout. The German brown trout, a second exotic species, was introduced into the park in 1947, and both species were stocked in park

waters until 1975. These two non-native species constitute 95 percent of the recreational creel base, with the native smallmouth bass and the redeye (or rockbass) making up the remaining five percent. Fishing for the native brook trout was discontinued in the mid-1970's to protect the dwindling populations still remaining in the higher elevations.

The park has evolved through a number of fishing regulation changes as the need arose and the circumstances dictated. The current regulation changes are based on recommendations by the U.S. Fish and Wildlife Service as a result of a two-year survey of low elevation streams, the discontinuance of a management program, and the need to streamline and reduce the complexity of current regulations to eliminate confusion and inadvertent violations by the public.

The current regulations divide the fishery resource basically into three categories. These divisions are general, sports, and children's fishing waters. The three types of management vary in permitted creel limits, creel size, season length, and bait use. This variety has led to visitor confusion and complaints on the complexity of the regulations and has complicated law enforcement efforts.

Areas of four streams were designated for children's fishing when park waters were stocked with fish. An interpretive program dealing with these activities was scheduled and conducted. Streams were stocked twice monthly to support the effort. Stocking of all park streams was terminated by 1975, and the children's interpretive programs were cancelled. However, current regulations still reflect this outdated activity.

A two-year fish survey conducted by the U.S. Fish and Wildlife Service on low elevation streams of the park suggested that current fishing regulations could be liberalized without seriously impacting the fishery resource. Sufficient natural reproduction and recruitment to sustain and perpetuate the resource will continue.

The proposed regulations were drafted and submitted to 28 professional fishery biologists representing both academic and management personnel. The draft rules were also submitted to local chapters of Trout Unlimited for comment. The input received was used to modify the proposal to the format appearing in this text.

The intended action of the regulation changes is to:

a. Delete reference regulations to children's fishing and allow adults as well as children to utilize the previously closed sections. The children's fishing area concept is no longer supported

biologically nor programwise in park policy.

b. Simplify park fishing regulations by combining all three categories under one set of regulations dealing with a uniform creel size, creel limit, bait use and season length to lessen visitor confusion and to simplify compliance.

c. Liberalize regulations and allow more utilization of the existing resources base without adversely affecting it. Current regulations are unnecessarily restrictive in light of new biological data.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to offer the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections to the address noted at the beginning of this rulemaking.

Drafting Information

The author of this regulation is Stuart E. Coleman, Great Smoky Mountains National Park.

Compliance with Other Laws

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service has prepared an environmental assessment on this proposed rulemaking which is available at the address noted above.

The Service has determined that this rulemaking is not a major rule within the meaning of E.O. 12291 (46 FR 13193; February 19, 1981). With the liberalization of fishing regulations as small increase of use can be expected. The resulting increase may have positive effects on surrounding stores and establishments selling supplies, licenses, and services sought by the angling public. However, the net benefit is estimated to be very minor in overall effect.

This rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Service has determined that the regulations proposed in this rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis.

Authority

Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3).

List of Subjects in 36 CFR Part 7

National parks.

PART 7—[AMENDED]

In consideration of the foregoing, it is proposed to amend § 7.14 of Title 36, Code of Federal Regulations by revising paragraphs (a)(4), (6), (7) and (8); by removing paragraphs (a)(9) and (10); and by redesignating paragraph (a)(11) as paragraph (a)(9) and reprinting it for the convenience of the reader as follows:

§ 7.14 Great Smoky Mountains National Park.

(a) * * *

(4) *Season.* Open all year for rainbow and brown trout, smallmouth bass, and redeye (rockbass). All other fish are protected and may not be taken by any means.

* * * * *

(6) *Fish Equipment and Bait.* Fishing is permitted only by use of one handheld rod and line.

(i) Only artificial flies or lures having one single hook may be used.

(ii) The use or possession of any form of fish bait other than artificial flies or lures on any park stream while in possession of fishing tackle is prohibited.

(7) *Size Limits.* All trout or bass caught less than the legal length shall be immediately returned unharmed to the water from which taken.

(i) No trout or bass less than 7" in length may be retained.

(ii) No size limit on redeye (rockbass).

(8) *Possession Limit.* (i) Possession limit shall mean and include the number of trout, bass or redeye (rockbass) caught in park waters which may be in possession, regardless of whether they are fresh, stored in ice chests, or otherwise preserved. A person must stop and desist from fishing for the remainder of the day upon attaining the possession limit.

(ii) Five fish, trout, bass, or redeye or a combination thereof, is the maximum number which a person may retain in one day or be in possession of at any one time.

(9) The superintendent may designate certain waters as Experimental Fish Management Waters and issue temporary and special rules regulating fishing use by posting signs and issuance of official public notification. All persons shall observe and abide by

such officially posted rules pertaining to these specially designated waters.

* * * * *

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

November 1, 1982.

[FR Doc. 82-32477 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[Docket No. 21025-217]

50 CFR Part 658**Shrimp Fishery of the Gulf of Mexico**

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. NOAA proposes to modify, temporarily, the boundary of the Tortugas Shrimp Sanctuary to reduce the area closed to trawl fishing. This action would enable fishermen to harvest marketable-sized shrimp from a small area that was previously closed. NOAA also corrects a definition for the phrase *fishery conservation zone*.

DATES: Written comments must be received on or before January 10, 1983.

ADDRESSES: A copy of the regulatory impact review may be obtained from and comments may be sent to: Jack T. Brawner, Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Jack T. Brawner, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was prepared by the Gulf of Mexico Fishery Management Council (Council) and was approved by the Assistant Administrator for Fisheries, NOAA, on November 7, 1980, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Final regulations implementing the FMP were effective May 20, 1981 (46 FR 27489). The Council prepared an FMP amendment that provides for modification of the closed area identified in 50 CFR 658.22 as the Tortugas Shrimp Sanctuary (Sanctuary). The plan amendment was approved on

December 28, 1981. A notice of availability and a request for comments on the amendment was published on January 28, 1982 (47 FR 4104). No written comments were received on the FMP amendment.

The primary purpose of establishing the Sanctuary was to protect small shrimp and allow them to attain a larger size prior to harvest. The FMP amendment stipulates that, prior to any modification of the Sanctuary, the National Marine Fisheries Service (NMFS) will monitor and assess the impacts of the closure and advise the Secretary of Commerce (Secretary) and Council of its findings. The Council may also consider the advice of its Shrimp Advisory Panel regarding the findings. The Secretary is authorized, after consultation with the Council, to modify the closure by regulatory amendment. Such modification is limited to no more than ten percent of the geographical scope of the Sanctuary.

After monitoring the closure for one year, NMFS has determined that harvestable populations of shrimp occur periodically within a small portion of the Sanctuary—a fact strongly supported by public testimony. Fishermen contend that shrimp from within this portion of the Sanctuary migrate to untrawlable areas and are unavailable to the fishery; this migration results in a significant economic loss to the fishermen. The Secretary, after consulting the Council, has determined that the small portion of the Sanctuary that periodically contains harvestable shrimp should be opened for a period extending through August 14, 1983. This area is less than ten percent of the geographical scope of the Sanctuary.

During this period, the catch, size distribution, and migration of shrimp in the area will be carefully monitored. This study will provide conclusive evidence of shrimp migratory patterns and availability and clarify the proper management strategy regarding smaller shrimp. It will also provide information for managers to determine whether the benefits of harvesting the larger shrimp outweigh the loss in economic value that results from taking small shrimp. This temporary geographic modification is consistent with the goals and objectives of the FMP, because it will determine whether catch from this portion of the Sanctuary is being optimized under the closure. The Regional Director has reviewed the criteria for modifying the Sanctuary as set forth in the amendment, and finds they have been met.

NOAA proposes to modify the boundary of the Tortugas Shrimp

Sanctuary as defined in 50 CFR 658.22. An area of approximately 44 square miles, bounded by a line through points F, Q, R, F (See Figure 1), will be opened to shrimp fishing through August 14, 1983, at which time the Sanctuary boundary will revert to its original configuration.

NOAA also corrects the definition of fishery conservation zone (FCZ). The definition of FCZ for this fishery deviated from the "model" definition used for other fisheries by insertion of a reference to "the territorial sea of the constituent States." For most coastal States, the FCZ is adjacent to the U.S. territorial sea of three miles because the State's seaward boundary is also three miles. But for Texas, Puerto Rico, and the Gulf coast of Florida, the FCZ begins at their seaward boundaries of nine nautical miles. Thus the "territorial sea" reference was confusing and even inaccurate; it will be deleted from § 658.2.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this amendment to the regulations complies with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Administrator, NOAA, has determined that this amendment is not a major rule requiring the preparation of a regulatory impact analysis under Executive Order 12291. The regulatory impact review indicated that potential benefits are significantly greater than expected costs. The proposed rulemaking would reduce a restriction on fishermen, slightly reduce

enforcement requirements and costs, and is expected to increase shrimp landings.

The General Counsel for the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Under the National Environmental Policy Act and NOAA Directive 02-10, an environmental assessment was prepared to determine whether it was necessary to prepare a supplemental environmental impact statement. NOAA concluded that these regulations would not be a major Federal action and would not have a significant impact on the quality of the human environment.

List of subjects in 50 CFR Part 658

Fish, Fisheries, Fishing.

Dated: November 22, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries.

50 CFR Part 658 is proposed to be amended as follows:

PART 658—[AMENDED]

1. The authority citation for Part 658 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The definition of *fishery conservation zone* in § 658.2 is revised to read as follows:

§ 658.2 Definitions.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries,

encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

3. Section 658.22 and Figure 1 are revised to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

(a) The area commonly known as the "Tortugas Shrimp Sanctuary," off the State of Florida, is closed to all trawl fishing. The area is that part of the fishery conservation zone shoreward of a line connecting the following points (see Figure 1):

Point	Latitude	Longitude	Common name
N.....	25°52.9' N	81°37.95' W	Coon Key Light.
F.....	24°50.7' N	81°51.3' W	
G.....	24°40.1' N	82°26.7' W	New Grounds, Shoals Light.
H.....	24°34.7' N	82°35.1' W	Rebecca Shoals Light.
P.....	24°35' N	82°08' W	Marquessas Keys.

(b) Notwithstanding the provisions of paragraph (a) above, effective through August 14, 1983, fishing is allowed within that portion of the Sanctuary circumscribed by a line connecting the following points:

Point	Latitude	Longitude
F.....	24°50.7' N	81°51.3' W.
Q.....	24°46.0' N	81°52.4' W.
R.....	24°44.6' N	82°11.3' W.
F.....	24°50.7' N	81°51.3' W.

BILLING CODE 3510-22-M

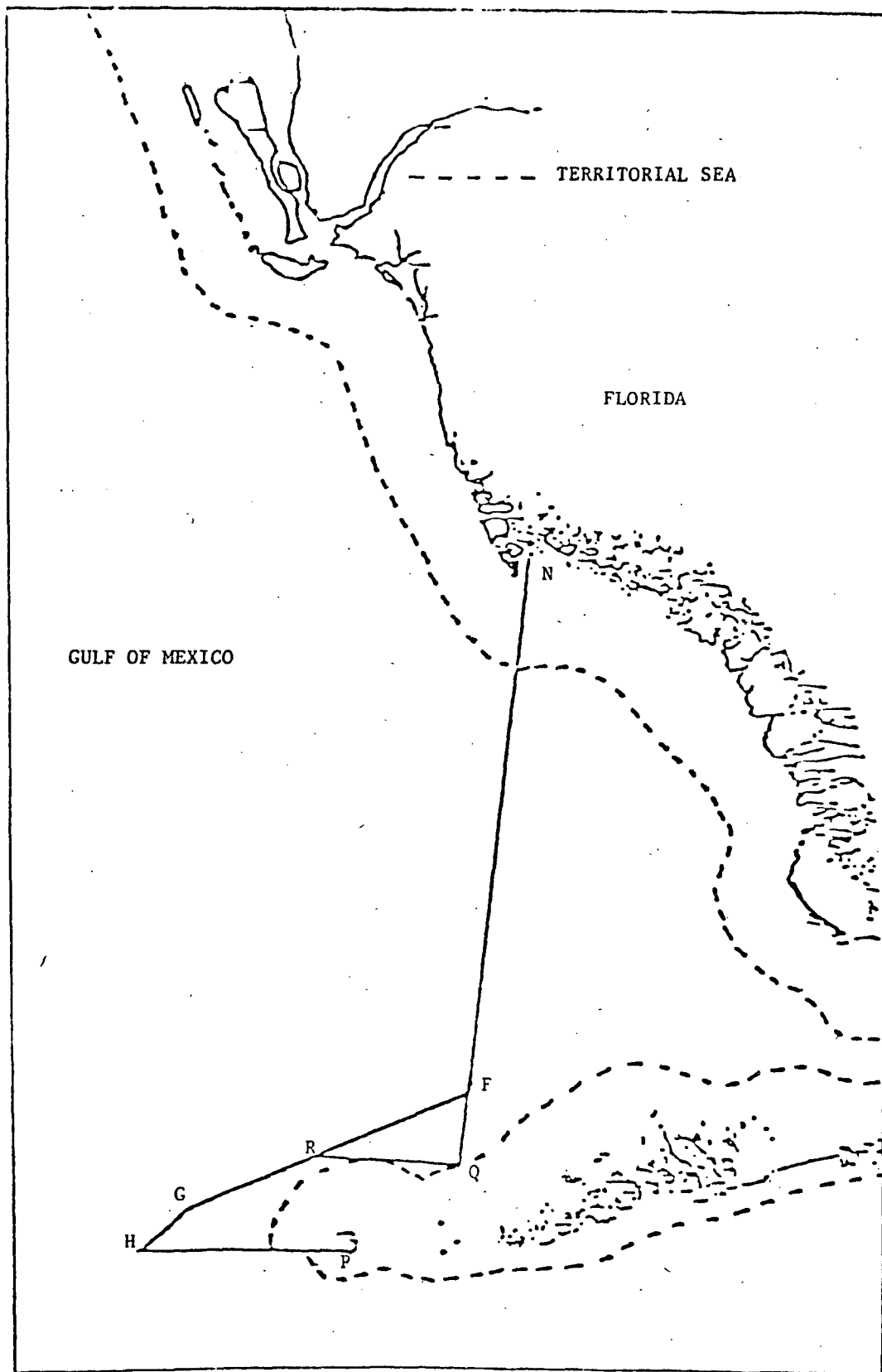


FIGURE 1. LOCATION OF TORTUGAS SHRIMP SANCTUARY.

Notices

Federal Register

Vol. 47, No. 228

Friday, November 26, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement on Surface Coal Mining; Public Information Meeting

Notice is hereby given that on December 8, 1982 at 9:30 A.M. a public information meeting will be held at the office of the National Trust for Historic Preservation, 1785 Massachusetts Avenue NW., Washington, D.C.

This meeting is being called by the Council in accordance with Section 800.8 of the Council's regulations, to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to express their views concerning the proposed amendment of an existing Programmatic Memorandum of Agreement (PMOA) concerning identification and treatment of historic properties in connection with surface mining on Federal lands and/or exploiting Federal coal. Notice of initiation of consultation on this amendment was published in the Federal Register on March 25, 1982 (47 FR 12833).

The following is a summary of the agenda of the meeting:

I. Explanation of meeting procedures and purpose by a representative of the Council.

II. Description of the proposed amendment.

III. Statement by the National Conference of State Historic Preservation Officers.

IV. Statements by public officials, representatives of industry, private and public organizations, and members of the public.

V. General question-and-answer period.

Speakers should limit their statements to 5 minutes. Written statements in

furtherance or in lieu of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Advisory Council on Historic Preservation, 1522 Street NW., Washington, D.C. 20005, telephone 202-254-3974, attention Michael Quinn or Thomas F. King.

Dated: November 22, 1982.

Thomas F. King,

Director, Office of Cultural Resource Preservation.

[FR Doc. 82-32388 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE Forest Service

Carson National Forest Grazing Advisory Boards; Meeting

The East and West Carson Grazing Advisory Boards will meet at 10:00 a.m. on December 17, 1982, in the Conference Room of the Forest Supervisor's Office, Carson National Forest, Cruz Alta Road, Taos, New Mexico.

The purpose of the meeting will be to discuss the allotment management planning for the Valle Vidal Unit of the Questa Ranger District.

The meeting will be open to the public. Persons who wish to attend should notify Ken Bishop, telephone 505/758-2237, P.O. Box 558, Taos, New Mexico 87571.

Written statements may be filed before or after the meeting.

Dated: November 18, 1982.

Jack Crellin,

Forest Supervisor.

[FR Doc. 82-32410 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-11-M

Lewis and Clark National Forest Grazing Advisory Board; Meeting

The Lewis and Clark National Forest Grazing Advisory Board will meet at 12:30 p.m., on Thursday, December 16, 1982, at the CasCo Building, 1601 Second Avenue North (Conference Room A on the second floor), Great Falls, Montana.

The purpose of the meeting is to review the Lewis and Clark National Forest's range management accomplishments in fiscal year 1982 and program for fiscal year 1983. The Forest Service will provide specific information on their priorities for noxious weed

control, prescribed burning, allotment analysis and plans, and for structural range improvement construction. There will be opportunity for the Board to offer advice and make recommendations to the Forest Supervisor on the Forest Service plans.

The proposed Forest Plan and draft Environmental Impact Statement for the Lewis and Clark National Forest will also be discussed. There will be opportunity for the Board members to ask questions, offer advice, and make recommendations concerning the management programs proposed in these documents.

An open discussion will also be held on topics of interest to the Advisory Board, and followup discussion in topics raised in the August 26 meeting. Nomination of board members for 1983 will be made.

The meeting will be open to the public. Persons who wish to attend should notify George P. Raths, Chairman of the Board, P.O. Box 478, Roundup, Montana, 59072, phone 323-1084, or Wayne Phillips, Acting Secretary, Lewis and Clark National Forest, Box 871, Great Falls, MT 59403, telephone 727-8901. Written statements may be filed with the Board before or after the meeting.

Dated: November 16, 1982.

Paul R. Threlkeld,

Acting Forest Supervisor, Lewis & Clark National Forest.

[FR Doc. 82-32470 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

Members of Performance Review Boards

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published October 6, 1982, 47 FR 44127.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Earl C. Hadlock, Chief, Executive Resources, Performance Appraisal, and Merit Pay Staff, Office of Personnel, Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250 (202/447-2830).

The membership of the Department of Agriculture's Performance Review Boards is amended by adding the names of Orville G. Bentley and Edgar L. Kendrick.

Dated: November 22, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-32471 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-01-M

Extension Service

Joint Committee on the Future of Cooperative Extension; Meeting

Notice is hereby given that the Joint Committee on the Future of Cooperative Extension will meet December 15, 1982, from 12:00 p.m. to 5:00 p.m., and 7:00 p.m. to 9:30 p.m., and December 16, 1982, from 8:30 a.m. to 12:00 p.m., at Stan Musial's and Biggies Airport Hilton Inn, 1330 Natural Bridge Road, St. Louis, Missouri 63134.

The Committee's purpose is to advise the Secretary of Agriculture on policies and programs affecting the mission, future scope and priorities of Cooperative Extension nationally throughout the 1980's and beyond. The agenda for the meeting will consist of presentations by farm and other national user groups, discussion of draft sections of the Committee report, and plans for dissemination and implementation of report recommendations.

The meeting of the Joint Committee on the Future of Cooperative Extension is open to the public for observation on a space available basis.

For additional information contact Dr. Mary Nell Greenwood, Administrator, Extension Service, Room 340 Administration Building, 14th and Independence Avenue, SW, Washington, D.C. 20250. Telephone 202/447-3377. Written comments may also be addressed to Dr. Greenwood.

Denzil O. Clegg,

Associate Administrator, Extension Service.

[FR Doc. 82-32383 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Hull-York Lakeland RC&D Area Critical Area Treatment RC&D Measures, Tennessee; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hull-York Lakeland RC&D Area Critical Area Treatment Measures in Cannon, Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, Warren and White Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, Telephone: 615/251-5471

SUPPLEMENTARY INFORMATION: The environmental assessment of these federally assisted actions indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

These measures concern plans for critical area treatment caused by gully and rill erosion and the resulting sediment (sediment pollution). The planned works of improvement include erosion control practices such as grade stabilization structures, diversions, critical area plantings, and grassed waterways. The critical area plantings include trees and/or grasses and legumes.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation are on file and may be reviewed by contacting the Soil Conservation Service Area Office, 118 South Dixie, Cookeville, Tennessee 38501. An environmental assessment has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental assessment are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Office of Management and Budget Circular A-95 regarding State and local clearinghouse

review of Federal and federally assisted programs and projects is applicable.)

Dated: November 17, 1982.

Billy K. Benson,

Deputy State Conservationist.

[FR Doc. 82-32360 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-16-M

Marne Creek Watershed, South Dakota; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Marne Creek Watershed project, Yankton County, South Dakota, effective on November 2, 1982.

FOR FURTHER INFORMATION CONTACT: Robert D. Swenson, State Conservationist, Soil Conservation Service, 200 Fourth Street SW., Huron, South Dakota 57350, telephone 605-352-8651.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Lawrence N. Nieman,

Acting State Conservationist.

November 17, 1982.

[FR Doc. 82-32359 Filed 11-24-82; 8:45 a.m.]

BILLING CODE 3410-16-M

Turnmill Pond RC&D Measure, New Jersey; No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Turnmill Pond RC&D Measure, Ocean County, New Jersey.

FOR FURTHER INFORMATION CONTACT:

Kenton R. Inglis, Acting State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1205.

SUPPLEMENTARY INFORMATION:

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kenton R. Inglis, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for fish and wildlife development. The planned works of improvement include the reconstruction of the Turnmill Pond dam and the installation of an associated boat ramp, comfort station and parking area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Kenton R. Inglis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation, and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: November 19, 1982.

Kenton R. Inglis,

Acting State Conservationist.

[FR Doc. 82-32418 Filed 11-24-82; 8:45 am]

BILLING CODE 3410-16-M

Windmill Park Land Drainage and Critical Area Treatment RC&D Measure Plan, West Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on

Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Windmill Park Land Drainage and Critical Area Treatment RC&D Measure, Marion County, West Virginia.

FOR FURTHER INFORMATION CONTACT:

Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, telephone 304-291-4151.

SUPPLEMENTARY INFORMATION:

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The planned works of improvement will be installed at Windmill Park in Marion County, West Virginia. The measure concerns land drainage and critical area treatment. Conservation practices include diversions, vegetative waterways, subsurface drains, drop structures, rock riprap, and seeding.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Rollin N. Swank,

State Conservationist.

November 10, 1982.

[FR Doc. 82-32202 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE**International Trade Administration**

Stainless Steel Round Wire; Announcement of First Quarter 1983 Trigger Prices

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of the First Quarter 1983 Trigger Price Levels for Stainless Steel Round Wire Products.

SUMMARY: The Department of Commerce announces that base prices and extras for first quarter 1983 trigger prices of stainless steel round wire products will decline an average of 1.6 percent from their fourth quarter 1982 levels. These decreases, due to the depreciation of the yen relative to the dollar, were partially offset by an increase in the cost of fuel. The Department uses trigger prices to monitor the prices of stainless steel wire and drawn round bar under 0.703 inches in diameter for possible initiation of antidumping or countervailing duty investigations if unfair sales of these products appear to be injuring domestic producers. Each quarter the Department reviews Japanese steel production and delivery costs and revises trigger prices accordingly.

The interest component of the delivery charges will decline causing the total landed trigger prices to decline. The first quarter trigger price applies to stainless steel round wire products and round stainless steel drawn bars in sizes under 0.703 inches in diameter exported to the United States on or after January 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Juanita S. Kavalauskas, Agreements Compliance Division, Import Administration, Room 3099, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Trigger price monitoring procedures for stainless steel round wire are the same as those published in the TPM Procedures Manual (46 FR 49928). Japanese stainless steel wire manufacturers agreed to supply cost of production and transportation information necessary to monitor the import prices. Commerce uses Special Summary Steel Invoices to monitor imports of stainless steel round wire and small cold drawn bar under 0.703 inches diameter. In computing the invoice price for comparison to the trigger price, Commerce will use a 13 percent annual

rate (1.08 percent per month) when interest must be adjusted and the actual rate is not known. For its calculation of trigger price levels, the yen/dollar exchange rate the Department uses to convert Japanese steel producers' yen denominated production cost to dollars is the average of the 36 months preceding the calculation and publication of the quarter's trigger price levels. The exchange rates used in the Department's first quarter 1983 production cost estimate is 232 yen to the dollar (the yen/dollar exchange rate average for November 1979 through October 1983). The 232 yen/dollar exchange rate represents a 1.75 percent decline in dollar denominated costs from the fourth quarter 1982 exchange rate of 228 yen to the dollar.

Other Charges

Trigger prices are an estimate of the Japanese stainless steel wire manufacturers' cost of production plus the cost of transporting to the United States and handling in the United States. Each trigger price includes ocean freight, insurance, interest and handling as well as the base price and extras. The ocean freight, handling and interest are shown for each of the major importing regions: Pacific Coast, Atlantic Coast, Gulf Coasts and the Great Lakes. All prices are shown in U.S. dollars per metric ton.

Interest charges have been adjusted to reflect the current level of prime interest rate. Handling and ocean freight charges remain unchanged. The extras shown define the coverage in terms of sizes, grades, and qualities.

The following rules apply to product coverage and extras:

(1) If a product fails to fit the general description because the cost of producing that product varies substantially from the cost of producing the product described in the heading, the product is not covered.

(2) If a product is covered by a grade which is not in the base coverage and for which no grade extra is listed, the product is not covered.

(3) If a product has a size specification that falls above the largest size specification shown or below the smallest size specification shown, it is not covered.

(4) If a product has a size specification that falls between two size specifications listed, it is covered and the specification with the higher dollar value is to be used unless otherwise noted on the page.

(5) If a product embodies extras other than size or grade which are not listed, the product is covered. In those cases, the base trigger price plus any applicable extras listed will be applied.

A list of stainless steel round wire and cold drawn bar products subject to trigger price monitoring and the applicable base prices and extras are contained in the Appendix to this notice.

Gary N. Horlick,
Deputy Assistant Secretary for Import
Administration.

Appendix.—1st Quarter 1983 Trigger Prices Per Metric Ton—Stainless Steel Wire

Round Stainless Steel Drawn Bars in Sizes Under 0.703 Inches

AISI CATEGORIES 20 AND 12

Charges to CIF	Ocean freight	Hand- ling	Inter- est (per- cent)
Pacific coast.....	\$107	\$9	2.5
Gulf coast.....	131	5	3.2
Atlantic coast.....	131	4	3.2
Great Lakes.....	171	4	4.0

Interest charge equals F.O.B. trigger base price including size extra times interest factor.

Insurance 1% of base price + extras + ocean freight.

Extras (\$/M.T.):

1. Annealed Wire—Group I

A. Base Prices Including Grade Extras

B. Size by Grade Group

C. Small Bar Size Extras

2. Hard/Spring Wire—Group II

A. Base Prices Including Grade Extras

B. Size by Grade Group

3. Soft/Intermediate Wire—Group III

A. Base Prices Including Grade Extras

B. Size by Grade Group

4. Coating

5. Finish

A. Centerless Ground

B. Centerless Ground and Polished

6. Diameter Tolerance

7. Straightening and Cut to Length

A. Size Range

B. Length

8. Packaging

Note.—This coverage applies to stainless steel round wire and stainless steel bar under 0.703 inches produced by drawing. Bar, in these sizes, if produced by hot rolling is not covered by published prices.

1. Group I—Annealed Wire: Soft wire in which there is no further cold drawing after the last annealing treatment. This wire is made by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright finish by annealing wet, oil or grease drawn wire in a protective atmosphere, and is sometimes described

as bright annealed wire.

A. Grades:

	Base price
301.....	1,863
302.....	1,916
303.....	2,009
304.....	1,963
305.....	2,125
310.....	3,492
314.....	3,955
316.....	2,797
316-L.....	2,959
317.....	3,280
317-L.....	3,422
304-L.....	2,125
17-4PH ¹	2,264
308.....	2,102
308-L.....	2,264
309.....	2,611
309-L.....	2,774
321.....	2,264
302 HQ (18-19LW) ²	2,078
347.....	2,565
384.....	2,611
409.....	1,476
410.....	1,175
416.....	1,175
420.....	1,221
430.....	1,221
430-F.....	1,430
434.....	1,522
434-A.....	1,337
446.....	1,800

¹ May also be designated as type 630 or as UNS 17400.

² May also be designated as type 302 CU and as 306.

B. Size:*

	Grade group		
	300 series and 17- 7PH	400 series	17-4PH, 15-5PH
.574" to .703".....	358	451	356
.501" to .573".....	356	451	356
.500".....	364	451	364
.375" to .499".....	396	466	394
.3125" to .374".....	402	466	402
.250" to .312".....	440	466	440
.234" to .249".....	490	489	490
.216" to .233".....	513	507	513
.200" to .215".....	586	527	586
.185" to .199".....	637	575	637
.170" to .184".....	644	588	644
.165" to .169".....	675	611	675
.142" to .164".....	705	697	705
.128" to .141".....	718	798	717
.113" to .127".....	781	849	718
.099" to .112".....	889	950	720
.086" to .098".....	945	1,041	728
.076" to .085".....	1,008	1,092	766
.067" to .075".....	1,044	1,151	908
.058" to .066".....	1,108	1,278	1,030
.051" to .057".....	1,158	1,336	1,080
.044" to .050".....	1,211	1,412	1,130
.038" to .043".....	1,292	1,461	1,214
.033" to .037".....	1,396	1,628	1,318
.030" to .032".....	1,447	1,737	1,447
.027" to .029".....	1,545	.....	1,545
.024" to .026".....	1,654	.....	1,654
.021" to .023".....	1,803	.....	1,808
.019" to .020".....	1,884	.....	1,884
.018".....	1,967	.....	1,967
.017".....	2,016	.....	2,016
.016".....	2,046	.....	2,046
.015".....	2,103	.....	2,103
.014".....	2,266	.....	2,266
.013".....	2,392	.....	2,392
.012".....	2,446	.....	2,446
.011".....	2,555	.....	2,555
.010".....	2,722	.....	2,722
.009".....	2,882	.....	2,882
.008".....	3,189	.....	3,189
.0075".....	3,354	.....	3,354
.007".....	3,597	.....	3,597
.0065".....	4,049	.....	4,049
.006".....	4,518	.....	4,518

*All intermediate sizes to take next higher price.

	Grade group		
	300 series and 17-7PH	400 series	17-4PH, 15-5PH
.00575"	4,939		3,939
.0055"	5,893		5,893
.00525"	5,990		5,990
.005"	6,188		6,188
.00475"	6,281		6,281
.0045"	6,581		6,581
.00425"	7,030		7,030
.004"	7,677		7,677
.00375"	15,904		15,904
.0035"	18,451		18,451
.00325"	21,254		21,254
.003"	24,035		24,035
.0027"	26,097		26,097
.0025"	27,305		27,305
.002"	33,315		33,315

C. Small Bar:* Small cold drawn bar in wire gauges is to be trigger priced using these size extras:

Size range:**

	Grade group		
	300 series 17-7 PH	400 series	17-4 PH, 15-5 PH
.574" to .703"	321	270	321
.501" to .573"	321	270	321
.500"	349	299	349
.375" to .499"	349	299	349
.3125" to .374"	391	335	391
.250" to .312"	391	335	391
.234" to .249"	391	335	391
.216" to .233"	467	417	467
.185" to .215"	467	417	467

2. Group II—Hard/Spring Wire: wire drawn in several drafts as required to produce the high tensile strengths required for such products as spring wire.

A Grades:

	Base price
301	1,983
302	1,916
303	2,009
304	1,963
305	2,125
310	3,492
314	3,955
316	2,797
316-L	2,959
317	3,260
317-L	3,422
321	2,264
17-4PH*	2,264
17-7PH**	2,889
308	2,102
308-L	2,264
309	2,611
309-L	2,774
302 HQ (18-19LW)**	2,078
347	2,565
384	2,611
409	1,476
410	1,175
416	1,175
420	1,221

*Annealing and pickling is included in base material cost. Size extras include cost of straightening and cut to length.

**Intermediate sizes to take next higher price.

	Base price
430	1,221
430-F	1,430
434	1,522
434-A	1,337
446	1,800

* May also be designated as type 630 or UNS 17400.
** May also be designated as type 302 CU or 308.
*** May also be designated as type 631 or UNS 17700.

B. Size:*

	Grade group 300 series and 17-7PH
Over .375"	738
.3125" to .374"	738
.2500" to .312"	738
.234" to .249"	738
.218" to .233"	738
.200" to .215"	738
.185" to .199"	738
.170" to .184"	738
.155" to .169"	738
.142" to .154"	712
.128" to .141"	712
.113" to .127"	712
.099" to .112"	748
.086" to .098"	829
.076" to .085"	889
.067" to .075"	965
.058" to .066"	1,072
.051" to .057"	1,289
.044" to .050"	1,481
.038" to .043"	1,562
.033" to .037"	1,713
.030" to .032"	1,804
.027" to .029"	2,173
.024" to .026"	2,370
.021" to .023"	2,603
.019" to .020"	2,911
.018"	3,523
.017"	3,826
.016"	3,922
.015"	4,037
.014"	4,225
.013"	4,377
.012"	4,687
.011"	5,994
.010"	6,152
.009"	6,391
.008"	6,609

3. Group III—Soft/Intermediate Wire: wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties can be varied between soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry drawn tempers. Cold heading wire belongs in this group.

A. Grades:

	Base price
301	1,963
302	1,916
302 (302HQ, 18-8LW)	2,078
303	2,009
304	1,963

*All intermediate sizes to take next higher price.

*All intermediate sizes to take next higher price.

	Base price
310	3,492
314	3,955
316	2,797
316-L	2,959
317	3,260
317-L	3,422
321	2,264
17-4PH*	2,264
308	2,102
308-L	2,264
309	2,611
309-L	2,774
347	2,565
384	2,611
409	1,476
410	1,175
416	1,175
420	1,221
430	1,221
430-F	1,430
434	1,522
434-A	1,337
446	1,800

* May also be designated as type 630 or UNS 17400.

B. Size:*

	Grade group		
	300 series and 17-7PH	400 series	17-4PH, 15-5PH
Over .375"	624	491	624
.3125" to .374"	624	491	624
.2500" to .312"	624	491	624
.2340" to .249"	679	537	679
.2160" to .233"	679	537	679
.200" to .215"	679	537	679
.185" to .199"	735	582	735
.170" to .184"	735	582	735
.155" to .169"	735	618	735
.142" to .154"	815	683	815
.128" to .141"	815	800	815
.113" to .127"	871	886	871
.099" to .112"	981	972	881
.086" to .098"	1,082	1,053	1,082
.076" to .085"	1,132	1,104	1,132
.067" to .075"	1,257	1,202	1,257
.058" to .066"	1,363	1,365	1,363
.051" to .057"	1,409	1,542	1,409
.044" to .050"	1,464	1,563	1,464
.038" to .043"	1,591	1,674	1,591
.033" to .037"	1,692	1,786	1,692
.030" to .032"	1,806	1,958	1,806
.027" to .029"	1,974		1,974
.024" to .026"	2,126		2,126
.021" to .023"	2,293		2,293
.019" to .020"	2,449		2,449

4. Coating: Material provided uncoated or coated with lime (or equivalent to lime) and/or soap will carry no extra. Other coatings require an appropriate extra where additional costs are involved. Metallic coatings include copper, nickel, and lead. Non-metallic coatings include plastics, molybdenum disulfide, etc.

Size Range:

	Metallic		Non-metallic
	Copper	Nickel	
Over .154"	117	36	25
.099" to .154"	175	36	25

* All intermediate sizes to take next higher price.

	Metallic		Nonmetallic
	Copper	Nickel	
.063" to .098".....	233	48	32
.041" to .062".....		74	49
.030" to .040".....		101	65
.025" to .029".....		101	65
.020" to .024".....		138	93
.015" to .019".....		181	123
.010" to .014".....		214	148

5. Finish. Size Ranges:*

	Centerless ground	Centerless ground and polished
.595" to .703".....	492	619
.501" to .594".....	492	619
.500".....	544	688
.375" to .499".....	556	710
.3125" to .374".....	556	710
.250" to .3124".....	556	710
.234" to .249".....	854	1,037
.216" to .233".....	854	1,037
.200" to .215".....	945	1,152
.185" to .199".....	1,105	1,335
.170" to .184".....	1,301	1,546
.155" to .169".....	1,558	1,822
.142" to .154".....	1,816	2,079
.128" to .141".....	2,136	2,400
.113" to .127".....	2,675	2,961
.093" to .112".....	5,448	5,998

*Intermediate sizes to take next higher price.
These extras are applicable to all grades listed.
Straightening and cut to length extras are included in the above finish extras.

6. Diameter Tolerance.

STANDARD: AISI OR JIS SPECIFICATION

	Extra
Standard.....	Base:
Not less than 1/2 standard.....	101.
Closer than 1/2 to 1/4 standard.....	25 percent of size extra.
Closer than 1/4 standard.....	50 percent of size extra.

7. Straightening and Cut to length: Use the sum of the appropriate extras from A and B below to form the total extra:

A. Size Range:

	Extras
.595" to .703".....	103
.501" to .594".....	103
.500".....	103
.375" to .499".....	129
.3125" to .374".....	129
.250" to .3124".....	233
.170" to .249".....	582
.099" to .169".....	1,683
.051" to .098".....	1,942
.032" to .050".....	

B. Length:

Under 12".....	91
12" to under 18".....	58
18" to under 24".....	58
24" to under 30".....	38
30" to under 36".....	38
36" to under 48".....	38
48" to under 60".....	38
60" to under 72".....	38

72" to under 120".....	33
120" to under 168".....	33
168" to under 192".....	33
192" to under 216".....	33
216" to under 240".....	33
240" to under 264".....	26
264" to under 288".....	26
288" to under 316".....	26

8. Packaging.

Bundle.....	26
Wooden Boxes.....	90
Fibre Drums.....	83
Coil Carriers.....	26
Spools:	
Sizes under .020".....	162
Both Spools and Wooden Boxes:	
Sizes .020" and greater.....	90
Sizes under .020".....	252

[FR Doc. 82-32199 Filed 11-24-82; 8:45 am]

BILLING CODE 3510-25-M

Carbon Steel Wire Nails From Japan; Announcement of First Quarter Monitoring Prices

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of First Quarter 1983 Monitoring Prices for Carbon Steel Wire Nails from Japan.

SUMMARY: The Department of Commerce continues to monitor imports of carbon steel wire nails from Japan in accordance with an August 11, 1981 memorandum of understanding which expires two years from its inception, and announces that first quarter 1983 monitoring prices for carbon steel wire nails from Japan have declined 1.7 percent from the fourth quarter 1982 prices. The first quarter 1983 monitoring price applies to those products exported to the United States on or after January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Juanita S. Kavalas, Agreements Compliance Division, Import Administration, Room 3099, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION: In compliance with a memorandum of understanding submitted August 10, 1981, Japanese nail manufacturers provided assurances that all contracts for the sale of carbon steel wire nails to the United States below trigger prices ceased on or about March 5, 1981, and that all sales of the product for a two year period beginning August 11, 1981 would be made at prices at or above the relevant trigger prices.

The Japanese nail manufacturers agreed to supply all costs of production and transportation information necessary to monitor the import prices. The Japanese manufacturers agreed that if the Trigger Price Mechanism (TPM) were terminated or suspended prior to the two year period, they would continue to provide TPM type cost information through the Japanese Ministry of International Trade and Industry (MITI) in order that the Department of Commerce could continue to calculate monitoring prices. The TPM was suspended January 11, 1982 and trigger price monitoring was reinstated only for stainless steel round wire products in April 1982.

Commerce will continue to monitor imports of certain carbon steel wire nails from Japan through the use of Special Summary Steel Invoices to assure compliance with the first quarter 1983 price levels.

For its calculation of monitoring price levels the dollar/yen exchange rate the Department uses to convert Japanese steel producers' yen-denominated production cost to dollars is the average of the 36 months preceeding the calculation and publication of the quarter's monitoring price levels. The exchange rate used in the Department's first quarter 1983 production cost estimate is 232 yen to the dollar (the yen/dollar exchange rate average for November 1979 through October 1983).

Commerce's dollar valued estimate of the current production cost to Japan's wire nail producers declined 1.7 percent from the fourth quarter 1982 level. Although fuel experienced an increase in cost from fourth quarter 1982, this was offset by depreciation of the yen.

Other Changes

The first quarter 1983 carbon steel wire nail monitoring prices are an estimate of the Japanese nail manufacturers' production cost plus the cost of transporting to the United States and handling in the United States. Thus, charges for ocean freight, interest, handling and insurance must be added to the production costs described above and reflected in monitoring price base and extras. The freight and handling charges remain unchanged from fourth quarter 1982 levels. Interest charges have been adjusted to reflect the current prime interest rate.

A list of the carbon steel wire nails subject to monitoring and applicable

base prices and extras are reproduced in the Appendix to this notice.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

Appendix. Monitoring Prices for Carbon Steel Wire Nails From Japan

AISI CATEGORY 20

[1st quarter base price per metric ton—\$399]

Charges to CIF	Ocean freight	Handling	Interest
Pacific coast	\$51	\$9	\$10
Gulf coast	65	5	13
Atlantic coast	70	4	13
Great Lakes	79	4	16

Insurance 1% of base price + extras + ocean freight.

Extras:

- General Extras
- Regular and Semi-Regular Wire Nails
- Smooth Shank Specialty Wire Nails, Special Order Size Extras
- Ring, Screw and Fluted Shank Specialty Wire Nails, Special Order Size Extras
- General.

	Ex-tras
A. Machine use quality	38
B. Packing:	
Standard 50 lb carton (loose)	Base
100 lb carton	Base
1 lb x 50	215
5 lb x 10	129
C. Palletizing	17
D. Quantity:	
Less than 2,400 lb per	14
Size	
Order	
Marking	
Destination	
Shipment	

2. Regular and Semi-Regular Nail Extras (\$/M.T.)

	Size extra
(1) Bright Common Nails	
2 d ASWG #15 x 1/4" x 1"	\$92
3 d ASWG #14 x 1/4" x 1 1/2"	76
4 d ASWG #12 1/2 x 1/2" x 1 1/2"	62
5 d ASWG #12 1/2 x 1/2" x 2"	51
6 d ASWG #11 1/2 x 1/2" x 2"	33
7 d ASWG #11 1/2 x 1/2" x 2 1/2"	31
8 d ASWG #10 1/2 x 1/2" x 2 1/2"	26
9 d ASWG #10 1/2 x 1/2" x 3"	26
10 d ASWG #9 1/2 x 1/2" x 3"	22
12 d ASWG #9 1/2 x 1/2" x 3 1/2"	22
16 d ASWG #8 1/2 x 1/2" x 3 1/2"	18
20 d ASWG #8 1/2 x 1/2" x 4"	Base
30 d ASWG #5 1/2 x 1/2" x 4 1/2"	31
40 d ASWG #4 1/2 x 1/2" x 5"	31
50 d ASWG #3 1/2 x 1/2" x 5 1/2"	31
60 d ASWG #2 1/2 x 1/2" x 6"	38
(2) Bright Smooth Box Nails	
2 d ASWG #15 1/2 x 1/2" x 1"	\$112
3 d ASWG #14 1/2 x 1/2" x 1 1/2"	90

	Size extra
4 d ASWG #14 x 1/2" x 1 1/2"	73
5 d ASWG #14 x 1/2" x 1 1/2"	58
6 d ASWG #12 1/2 x 1/2" x 2"	45
7 d ASWG #12 1/2 x 1/2" x 2 1/2"	44
8 d ASWG #11 1/2 x 1/2" x 2 1/2"	38
9 d ASWG #11 1/2 x 1/2" x 2 1/2"	38
10 d ASWG #10 1/2 x 1/2" x 3"	31
12 d ASWG #10 1/2 x 1/2" x 3 1/2"	31
16 d ASWG #10 1/2 x 1/2" x 3 1/2"	29
20 d ASWG #9 1/2 x 1/2" x 4"	28
30 d ASWG #9 1/2 x 1/2" x 4 1/2"	45
40 d ASWG #8 1/2 x 1/2" x 5"	45

(3) Bright Finishing Nails Cupped Head

	Size extra
3 d ASWG #15 1/2 x 12 1/2 x 1 1/2"	\$111
4 d ASWG #15 x 12 x 1 1/2"	88
5 d ASWG #15 x 12 x 1 1/2"	81
6 d ASWG #13 x 10 x 2"	54
8 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	51
9 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	51
10 d ASWG #11 1/2 x 8 1/2 x 3"	45
12 d ASWG #11 1/2 x 8 1/2 x 3 1/2"	45
16 d ASWG #11 x 8 x 3 1/2"	44

(4) Bright Casing Nails

	Size extra
2 d ASWG #15 1/2 x 12 1/2 x 1"	\$127
3 d ASWG #14 1/2 x 11 1/2 x 1 1/2"	101
4 d ASWG #14 x 11 x 1 1/2"	77
5 d ASWG #14 x 11 x 1 1/2"	70
6 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	52
7 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	51
8 d ASWG #11 1/2 x 8 1/2 x 2 1/2"	45
9 d ASWG #11 1/2 x 8 1/2 x 2 1/2"	45
10 d ASWG #10 1/2 x 7 1/2 x 3"	44
12 d ASWG #10 1/2 x 7 1/2 x 3 1/2"	44
16 d ASWG #10 x 7 x 3 1/2"	38

(5) E/G (Electro Galvanized) Common Nails

	Size extra
2 d ASWG #15 x 1/4" x 1"	\$197
3 d ASWG #14 x 1/4" x 1 1/2"	179
4 d ASWG #12 1/2 x 1/2" x 1 1/2"	165
5 d ASWG #12 1/2 x 1/2" x 1 1/2"	154
6 d ASWG #11 1/2 x 1/2" x 2"	123
7 d ASWG #11 1/2 x 1/2" x 2 1/2"	119
8 d ASWG #10 1/2 x 1/2" x 2 1/2"	113
9 d ASWG #10 1/2 x 1/2" x 3"	113
10 d ASWG #9 1/2 x 1/2" x 3"	109
12 d ASWG #9 1/2 x 1/2" x 3 1/2"	109
16 d ASWG #8 1/2 x 1/2" x 3 1/2"	106
20 d ASWG #8 1/2 x 1/2" x 4"	88
30 d ASWG #5 1/2 x 1/2" x 4 1/2"	119
40 d ASWG #4 1/2 x 1/2" x 5"	119
50 d ASWG #3 1/2 x 1/2" x 5 1/2"	119
60 d ASWG #2 1/2 x 1/2" x 6"	127

(6) E/G Smooth Box Nails

	Size extra
2 d ASWG #14 1/2 x 1/2" x 1"	\$216
3 d ASWG #14 1/2 x 1/2" x 1 1/2"	195
4 d ASWG #14 x 1/2" x 1 1/2"	177
5 d ASWG #14 x 1/2" x 1 1/2"	161
6 d ASWG #12 1/2 x 1/2" x 2"	135
7 d ASWG #12 1/2 x 1/2" x 2 1/2"	133
8 d ASWG #11 1/2 x 1/2" x 2 1/2"	127
9 d ASWG #11 1/2 x 1/2" x 2 1/2"	127
10 d ASWG #10 1/2 x 1/2" x 3"	119
12 d ASWG #10 1/2 x 1/2" x 3 1/2"	119
16 d ASWG #10 x 1/2" x 3 1/2"	117
20 d ASWG #9 1/2 x 1/2" x 4"	113
30 d ASWG #9 1/2 x 1/2" x 4 1/2"	135
40 d ASWG #8 1/2 x 1/2" x 5"	135

(7) E/G Finishing Nails Cupped Head

	Size extra
3 d ASWG #15 1/2 x 12 1/2 x 1 1/2"	\$214
4 d ASWG #15 x 12 x 1 1/2"	193
5 d ASWG #15 x 12 x 1 1/2"	184
6 d ASWG #13 x 10 x 2"	143
8 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	139
9 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	139
10 d ASWG #11 1/2 x 8 1/2 x 3"	135
12 d ASWG #11 1/2 x 8 1/2 x 3 1/2"	135
16 d ASWG #11 x 8 x 3 1/2"	133
20 d ASWG #10 x 7 x 4"	127

(8) E/G Casing Nails

	Size extra
2 d ASWG #14 1/2 x 12 1/2 x 1"	\$230
3 d ASWG #14 1/2 x 11 1/2 x 1 1/2"	206

	Size extra
4 d ASWG #14 x 11 x 1 1/2"	181
5 d ASWG #14 x 11 x 1 1/2"	173
6 d ASWG #12 1/2 x 9 1/2 x 2"	142
7 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	140
8 d ASWG #11 1/2 x 8 1/2 x 2 1/2"	135
9 d ASWG #11 1/2 x 8 1/2 x 2 1/2"	135
10 d ASWG #10 1/2 x 7 1/2 x 3"	133
12 d ASWG #10 1/2 x 7 1/2 x 3 1/2"	133
16 d ASWG #10 x 7 x 3 1/2"	127

(9) H/D (Hot Dip Galvanized) Common Nails

	Size extra
2 d ASWG #15 x 1/4" x 1"	\$342
3 d ASWG #14 x 1/4" x 1 1/2"	325
4 d ASWG #12 1/2 x 1/2" x 1 1/2"	311
5 d ASWG #12 1/2 x 1/2" x 1 1/2"	300
6 d ASWG #11 1/2 x 1/2" x 2"	268
7 d ASWG #11 1/2 x 1/2" x 2 1/2"	265
8 d ASWG #10 1/2 x 1/2" x 2 1/2"	259
9 d ASWG #10 1/2 x 1/2" x 2 1/2"	259
10 d ASWG #9 1/2 x 1/2" x 3"	256
12 d ASWG #9 1/2 x 1/2" x 3 1/2"	256
16 d ASWG #8 1/2 x 1/2" x 3 1/2"	252
20 d ASWG #8 1/2 x 1/2" x 4"	234
30 d ASWG #5 1/2 x 1/2" x 4 1/2"	265
40 d ASWG #4 1/2 x 1/2" x 5"	265
50 d ASWG #3 1/2 x 1/2" x 5 1/2"	285
60 d ASWG #2 1/2 x 1/2" x 6"	273

(10) H/D Smooth Box Nails

	Size extra
2 d ASWG #15 1/2 x 1/2" x 1"	\$362
3 d ASWG #14 1/2 x 1/2" x 1 1/2"	341
4 d ASWG #14 x 1/2" x 1 1/2"	322
5 d ASWG #14 x 1/2" x 1 1/2"	308
6 d ASWG #12 1/2 x 1/2" x 2"	281
7 d ASWG #12 1/2 x 1/2" x 2 1/2"	279
8 d ASWG #11 1/2 x 1/2" x 2 1/2"	273
9 d ASWG #11 1/2 x 1/2" x 2 1/2"	273
10 d ASWG #10 1/2 x 1/2" x 3"	265
12 d ASWG #10 1/2 x 1/2" x 3 1/2"	265
16 d ASWG #10 x 1/2" x 3 1/2"	262
20 d ASWG #9 1/2 x 1/2" x 4"	260
30 d ASWG #9 1/2 x 1/2" x 4 1/2"	281
40 d ASWG #8 1/2 x 1/2" x 5"	281

(11) H/D Finishing Nails Cupped Head

	Size extra
3 d ASWG #15 1/2 x 12 1/2 x 1 1/2"	\$360
4 d ASWG #15 x 12 x 1 1/2"	339
5 d ASWG #15 x 12 x 1 1/2"	330
6 d ASWG #13 x 10 x 2"	288
8 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	285
9 d ASWG #12 1/2 x 9 1/2 x 2 1/2"	285
10 d ASWG #11 1/2 x 8 1/2 x 3"	281
12 d ASWG #11 1/2 x 8 1/2 x 3 1/2"	281
16 d ASWG #11 x 8 x 3 1/2"	279
20 d ASWG #10 x 7 x 4"	273

	Total extra	Size extra	H/D extra
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(12) H/D Casing Nails

	Total extra	Size extra	H/D extra
2d ASWG #15 1/2 x 12 1/2 x 1"	\$377	(\$127)	(\$250)
3d ASWG #14 1/2 x 11 1/2 x 1 1/2"	(351)	(101)	250
4d ASWG #14 x 11 x 1 1/2"	(327)	(77)	(250)
5d ASWG #14 x 11 x 1 1/2"	(320)	(70)	(250)
6d ASWG #12 1/2 x 9 1/2 x 2"	(286)	(52)	(234)
7d ASWG #12 1/2 x 9 1/2 x 2 1/2"	(285)	(51)	(234)
8d ASWG #11 1/2 x 8 1/2 x 2 1/2"	(279)	(45)	(234)
9d ASWG #11 1/2 x 8 1/2 x 2 1/2"	(279)	(45)	(234)
10d ASWG #10 1/2 x 7 1/2 x 3"	(278)	(44)	(234)
12d ASWG #10 1/2 x 7 1/2 x 3 1/2"	(278)	(44)	(234)
16d ASWG #10 x 7 x 4"	(272)	(38)	(234)

(13) Cement Coated Box Nails

	Size extra
4 d ASWG #15 x 1/2" x 1 1/2"	\$118
4 1/2 d ASWG #15 x 1/2" x 1 1/2"	118
5 d ASWG #15 x 1/2" x 1 1/2"	97
6 d ASWG #13 1/2 x 1/2" x 1 1/2"	85
7 d ASWG #13 1/2 x 1/2" x 2 1/2"	85

	Size extra
8 d ASWG #12½ x ⅞" x 2½"	73
9 d ASWG #12½ x ⅞" x 2½"	73
10 d ASWG #11½ x ⅞" x 2½"	66

(14) Cement Coated Corkers Nails

3 d ASWG #15 x ⅞" x 1½"	123
4 d ASWG #13½ x ⅞" x 1½"	94
5 d ASWG #13½ x ⅞" x 1½"	85
6 d ASWG #12½ x ⅞" x 1½"	73
7 d ASWG #12½ x ⅞" x 2½"	70
8 d ASWG #11 x ⅞" x 2½"	64
9 d ASWG #11 x ⅞" x 2½"	64
10 d ASWG #10 x ⅞" x 2½"	60
12 d ASWG #10 x ⅞" x 3½"	58
16 d ASWG #9 x ⅞" x 3½"	57
20 d ASWG #7 x ⅞" x 3½"	51
30 d ASWG #6 x ⅞" x 4½"	64
40 d ASWG #5 x ⅞" x 4½"	64
50 d ASWG #4 x ⅞" x 5½"	64
60 d ASWG #3 x ⅞" x 5½"	73

(15) Cement Coated Coolers Nails

3 d ASWG #15½ x ⅞" x 1½"	123
4 d ASWG #14 x ⅞" x 1½"	94
5 d ASWG #13½ x ⅞" x 1½"	85
6 d ASWG #13 x ⅞" x 1½"	73
7 d ASWG #12½ x ⅞" x 2½"	70
8 d ASWG #11½ x ⅞" x 2½"	64
9 d ASWG #11½ x ⅞" x 2½"	64
10 d ASWG #11 x ⅞" x 2½"	60

(16) Cement Coated or Vinyl Coated Sinkers Nails

3 d ASWG #15½ x ⅞" x 1½"	123
4 d ASWG #14 x ⅞" x 1½"	94
5 d ASWG #13½ x ⅞" x 1½"	85
6 d ASWG #13 x ⅞" x 1½"	73
7 d ASWG #12½ x ⅞" x 2½"	70
8 d ASWG #11½ x ⅞" x 2½"	64
10 d ASWG #11 x ⅞" x 2½"	60
12 d ASWG #10 x ⅞" x 3½"	58
16 d ASWG #9 x ⅞" x 3½"	57
20 d ASWG #7 x ⅞" x 3½"	51
30 d ASWG #6 x ⅞" x 4½"	64
40 d ASWG #5 x ⅞" x 4½"	64
60 d ASWG #3 x ⅞" x 5½"	73

(17) Cement Coated Apple Box Nails

5 d ASWG #14 x ⅞" x 1½"	97
5½ d ASWG #14 x ⅞" x 1½"	97

(18) Cement Coated Fruit Box Nails

4 d ASWG #15 x ⅞" x 1½"	118
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(19) Cement Coated Orange Box Nails

4 d ASWG #15 x ⅞" x 1½"	118
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(20) Cement Coated Egg Case Nails

3 d ASWG #15 x ⅞" x 1½"	132
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	Size and E/G extra
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(21) Bright Barbed Roofing Nails

ASWG #11 x ⅞" x 1"	\$118
ASWG #11 x ⅞" x 1½"	107
ASWG #11 x ⅞" x 1½"	94
ASWG #11 x ⅞" x 1½"	88
ASWG #11 x ⅞" x 2"	70
ASWG #12 x ⅞" x 1"	144
ASWG #12 x ⅞" x 1½"	129
ASWG #12 x ⅞" x 1½"	119
ASWG #12 x ⅞" x 1½"	110
ASWG #12 x ⅞" x 2"	94

(22) E/G (Electro Galvanized) Barbed Roofing Nails

ASWG #11 x ⅞" x 1"	\$158
ASWG #11 x ⅞" x 1½"	145

	Size and E/G extra
ASWG #11 x ⅞" x 1½"	132
ASWG #11 x ⅞" x 1½"	127
ASWG #11 x ⅞" x 2"	107
ASWG #12 x ⅞" x 1"	181
ASWG #12 x ⅞" x 1½"	169
ASWG #12 x ⅞" x 1½"	158
ASWG #12 x ⅞" x 1½"	152
ASWG #12 x ⅞" x 2"	132

	Total extra	Size extra	Head extra
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(23) Bright Duplex Head Nails

6 d ASWG #11½ x ⅞" x 1½"	\$96
8 d ASWG #10½ x ⅞" x 2½"	85
10 d ASWG #9 x ⅞" x 2½"	85
16 d ASWG #8 x ⅞" x 3"	73

(24) Bright Smooth Joist Hanger Nails

ASWG #11 x ⅞" x 1½"	\$99
ASWG #10½ x ⅞" x 1½"	96
ASWG #9 x ⅞" x 1½"	96

	Total extra	Size extra	Head extra
(25) Tempered Hardened Steel Concrete Nails			
ASWG #9 x ⅞" x 1"	\$257	(\$111)	(\$146)
ASWG #9 x ⅞" x 1½"	253	(107)	(146)
ASWG #9 x ⅞" x 2"	238	(92)	(146)

(26) Bright Smooth Shank Drywall Nails

ASWG #12½ x ⅞" x 1½"	\$107
ASWG #12½ x ⅞" x 1½"	105
ASWG #12½ x ⅞" x 1½"	99

(27) Bright Barbed Shank Plywood Nails

	Total extra	Size extra	Head extra
ASWG #9 x ⅞" x 2"	\$93	(\$81)	(\$12)
ASWG #9 x ⅞" x 2½"	93	(81)	(12)
ASWG #9 x ⅞" x 2½"	89	(77)	(12)
ASWG #10½ x ⅞" x 1½"	99	(87)	(12)

(28) Bright Barbed Shank Joist Hanger Nails

ASWG #11 x ⅞" x 1½"	\$100	(\$88)	(\$12)
ASWG #10½ x ⅞" x 1½"	95	(83)	(12)
ASWG #9 x ⅞" x 1½"	95	(83)	(12)

(29) Bright Barbed Shank Truss Nails

ASWG #11 x ⅞" x 1½"	\$100	(\$88)	(\$12)
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	Total extra	Size extra	Head extra
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(30) C.C. (Cement Coated) Plaster Board Nails

ASWG #13 x ⅞" x 1"	\$135	(\$109)	(\$26)
ASWG #13 x ⅞" x 1½"	135	(109)	(26)
ASWG #13 x ⅞" x 1½"	131	(105)	(26)
ASWG #13 x ⅞" x 1½"	163	(105)	(26)
ASWG #13 x ⅞" x 1½"	163	(105)	(26)
ASWG #13 x ⅞" x 1½"	163	(105)	(26)
ASWG #13 x ⅞" x 1½"	163	(105)	(26)

(31) C.C. Smooth Shank Drywall Nails

ASWG #12½ x ⅞" x 1½"	\$131	(\$105)	(\$26)
ASWG #12½ x ⅞" x 1½"	125	(99)	(26)
ASWG #12½ x ⅞" x 1½"	131	(105)	(26)
ASWG #12½ x ⅞" x 1½"	125	(99)	(26)
ASWG #12½ x ⅞" x 1½"	157	(99)	(26)

(32) C.C. Barbed Shank Truss Nails

	Total extra	Size extra	Head extra
ASWG #11 x ⅞" x 1½"	\$132	(\$94)	(\$26)

(33) C.C. (or Vinyl Coated) Barbed Drywall Nails

	Total extra	Size extra	Head extra
ASWG #14 x ⅞" x 1½"	\$147	(\$109)	(\$26)
ASWG #13 x ⅞" x 1½"	143	(105)	(26)
ASWG #12½ x ⅞" x 1½"	137	(99)	(26)

(34) Phosphate Coated Drywall Nails (Flat Head)

	Total extra	Size extra	Head extra
ASWG #14 x ⅞" x 1½"	\$167	(\$109)	(\$26)
ASWG #13 x ⅞" x 1½"	163	(105)	(26)

(35) Phosphate Coated Drywall Nails (Full Cup Head)

	Total extra	Size extra	Head extra
ASWG #14 x ⅞" x 1½"	\$191	(\$109)	(\$26)
ASWG #13 x ⅞" x 1½"	187	(105)	(26)
ASWG #13½ x ⅞" x 1½"	183	(101)	(26)

(36) H/D Galv. Smooth Siding Nails

	Total extra	Size extra	Head extra
H/D Extra			

(36) H/D Galv. Smooth Siding Nails

			H/D Extra	
7 d ASWG #11 1/2 x 1/2" x 2 1/2".....	\$319	(\$85)	(\$234)	
8 d ASWG #11 1/2 x 1/2" x 2 1/2".....	311	(77)	(234)	

(37) Sterilized Blued Plaster Board Nails

			Blued Extra	Head Size Extra
ASWG #13 x 1/4" x 1".....	\$182	(\$109)	(\$73)	
ASWG #13 x 1/4" x 1 1/2".....	182	(109)	(73)	
ASWG #13 x 1/4" x 1 1/2".....	178	(105)	(73)	
ASWG #13 x 1/4" x 1 1/2".....	214	(109)	(73)	(\$32)

(38) Sterilized Blued Lath Nails

			Blued Extra	
ASWG #15 x 1/4" x 1 1/2".....	\$208	(\$135)	(\$73)	

(39) Sterilized Blued Shingle Nails

			Blued Extra	
ASWG #15 x 1/2" x 1 1/4".....	\$208	(\$135)	(\$73)	
	Total Extra	Size Extra		

(40) E/G Smooth Siding Nails

			E/G Extra	
5 d ASWG #14 x 1 1/2".....	\$210	(\$107)	(\$103)	
6 d ASWG #12 1/2 x 2".....	180	(92)	(88)	
7 d ASWG #12 1/2 x 2 1/2".....	180	(92)	(88)	
8 d ASWG #11 1/2 x 2 1/2".....	173	(85)	(88)	

(41) E/G Shingle Nails

			E/G Extra	
3 d ASWG #14 x 1/2" x 1 1/2".....	\$210	(\$107)	(\$103)	
4 d ASWG #13 x 1/2" x 1 1/2".....	202	(99)	(103)	

(42) E/G Plaster Board Nails

			E/G Extra	
ASWG #13 x 1/4" x 1".....	\$212	(\$109)	(\$103)	
ASWG #13 x 1/4" x 1 1/2".....	212	(109)	(103)	
ASWG #13 x 1/4" x 1 1/2".....	202	(99)	(103)	
	Total extra	Size extra		

(43) E/G Smooth Joist Hanger Nails

			E/G Extra	
ASWG #9 x 1/2" x 1 1/2".....	\$199	(\$96)	(\$103)	
ASWG #9 x 1/2" x 1 1/2".....	182	(94)	88	
ASWG #10 1/2 x 1/2" x 1 1/2".....	200	(97)	(103)	

(44) E/G Barbed Shank Joist Hanger Nails

			E/G Extra	Barbed Extra
ASWG #8 x 1/2" x 2".....	\$177	(\$77)	(\$88)	(\$12)
ASWG #9 x 1/2" x 1 1/2".....	192	(92)	(88)	(12)
ASWG #10 1/2 x 1/2" x 1 1/2".....	196	(96)	(88)	(12)
ASWG #11 x 1/2" x 1 1/2".....	199	(99)	(88)	(12)

Total extra Size extra E/G extra

(45) E/G Barbed Shank Plywood Nails

				Barbed extra
ASWG #10 1/2 x 1/2" x 1 1/2".....	\$196	(\$96)	(\$88)	(\$12)

(46) E/G Barbed Shank Truss Nails

				Barbed extra
ASWG #11 x 1/2" x 1 1/2".....	\$199	(\$99)	(\$88)	(\$12)

(47) E/G Barbed Shank Siding Nails

				Barbed extra
ASWG #14 x 1/2" x 1 1/2".....	\$222	(\$107)	(\$103)	(\$12)
ASWG #13 1/2 x 1/2" x 1 1/2".....	214	(99)	(103)	(12)

(48) E/G Tempered Hardened Steel Concrete Stub Nails

				T. H. extra
ASWG #9 x 1/2" x 1".....	\$360	(\$111)	(\$103)	(\$146)
ASWG #9 x 1/2" x 1 1/2".....	356	(107)	(103)	(146)
ASWG #9 x 1/2" x 2".....	326	(92)	(88)	(146)

(49) E/G Barbed Shank Painted Siding Nails

				Paint extra	Barbed extra
ASWG #12 1/2 x 1/2" x 2".....	\$357	(\$92)	(\$88)	(\$165)	(\$12)
ASWG #12 1/2 x 1/2" x 2 1/2".....	367	(92)	(88)	(165)	(12)
ASWG #13 x 1/2" x 1 1/2".....	388	(108)	(103)	(165)	(12)
ASWG #13 x 1/2" x 1 1/2".....	387	(107)	(103)	(165)	(12)
ASWG #13 x 1/2" x 2".....	361	(96)	(88)	(165)	(12)

[S/M.T.]

		Gauge								
		4-6%	7-8%	9-10%	11-11½	12-12½2	13-13½	14-14%	15-16%	17-18
Length:										
½				129						
¾				112						
1				103		118	123	146	158	177
1¼				89		111	115	130	146	161
1½-1¾				96	99	103	107	123	138	
2-2½				92	94	97	101	115	130	
2½-3				88	88	92	96	111		
3¼-4				85	81	85	88			
4½-5		85	85	77						
5½ up		81	81	69						
		77	77							

Note.—Size extras determined from this table apply only to items 30–49.

	Total extra	Size extra	E/G extra
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(50) Bright Annular Threaded Drywall Nails		
ASWG #12½ x 1¼" x 1"		\$189
ASWG #12½ x 1¼" x 1½"		181
ASWG #12½ x 1¼" x 1"		181
ASWG #12½ x 1½" x 1"		189
ASWG #12½ x 1½" x 1½"		189

ASWG #13 x $\frac{3}{8}$ " x 1"	\$250
ASWG #13 x $\frac{3}{8}$ " x 1 $\frac{1}{2}$ "	246
ASWG #13 x $\frac{3}{8}$ " x 1 $\frac{3}{4}$ "	222
ASWG #12 $\frac{1}{2}$ x $\frac{3}{8}$ " x 1 $\frac{1}{4}$ "	189
ASWG #12 $\frac{1}{2}$ x $\frac{3}{8}$ " x 1 $\frac{3}{8}$ "	189
ASWG #12 $\frac{1}{2}$ x $\frac{3}{8}$ " x 1"	189
ASWG #12 $\frac{1}{2}$ x $\frac{3}{8}$ " x 1 $\frac{1}{4}$ "	189
ASWG #12 $\frac{1}{2}$ x $\frac{3}{8}$ " x 1 $\frac{1}{2}$ "	189
ASWG #12 $\frac{1}{2}$ x $\frac{3}{8}$ " x 1 $\frac{3}{4}$ "	189
ASWG #12 $\frac{1}{2}$ x $\frac{3}{8}$ " x 2"	177
ASWG #14 x $\frac{3}{4}$ " x 1"	361

ASWG #12½ x 1¼" x 1½"	\$292	(\$189)	(\$103)
ASWG #12½ x 1¾" x 1½"	292	(189)	(103)
ASWG #12½ x 1½" x 1½"	285	(182)	(103)
ASWG #12½ x 1¼" x 1½"	284	(181)	(103)
ASWG #13 x 1½" x 1"	353	(250)	(103)
ASWG #13 x 1¾" x 1½"	325	(222)	(103)

ASWG #13 x $\frac{7}{16}$ " x $1\frac{1}{2}$ "	\$364	(\$261)	(\$103)
ASWG #13 x $\frac{7}{16}$ " x $1\frac{3}{4}$ "	364	(261)	(103)
ASWG #13 x $\frac{7}{16}$ " x 2"	306	(203)	(103)

	Total extra	Size extra	Blue extra
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ASWG #12½ x 1¼" x 1¼"	\$262	(\$189)	(\$73)
ASWG #12½ x 1¼" x 1¾"	\$262	(\$189)	(\$73)
ASWG #12½ x 1¼" x 1½"	\$254	(\$181)	(\$73)
ASWG #12½ x 1¼" x 1¾"	\$254	(\$181)	(\$73)

			Blue extra
ASWG #14 $\frac{1}{2}$ " x $\frac{3}{8}$ " x 1"	\$442	(\$369)	(\$73)
ASWG #14 x $\frac{3}{8}$ " x 1"	\$434	(\$361)	(\$73)
ASWG #14 x $\frac{3}{8}$ " x 1 $\frac{1}{2}$ "	\$426	(\$353)	(\$73)
ASWG #13 x $\frac{3}{8}$ " x 1"	\$323	(\$250)	(\$73)
ASWG #13 x $\frac{3}{8}$ " x 1 $\frac{1}{2}$ "	\$295	(\$222)	(\$73)
ASWG #12 $\frac{1}{2}$ " x $\frac{3}{8}$ " x 1 $\frac{1}{2}$ "	\$262	(\$189)	(\$73)

	Total extra	Size extra	Blue extra
ASWG #12 $\frac{3}{4}$ x $\frac{1}{2}$ " x 1 $\frac{1}{2}$ "	\$262	(\$189)	(\$73)

			C.C. extra
ASWG #12½ x 1½" x 1½"	\$215	(\$189)	(\$26)
ASWG #12½ x 1½" x 1½"	215	(189)	(\$26)
ASWG #12½ x 1½" x 1½"	207	(181)	(\$26)
ASWG #12½ x 1½" x 1½"	207	(181)	(\$26)
ASWG #13 x 1½" x 1"	276	(250)	(\$26)
ASWG #13 x 1½" x 1"	276	(250)	(\$26)

			H/D extra
ASWG #14 x ½" x 1 ½"	\$580	(\$346)	(234a)
ASWG #14 x ¾" x 1 ½"	565	(331)	(234)
ASWG #13 x ¾" x 2"	435	(201)	(234)
ASWG #12 ½ x 1 ¾" x 2 ½"	407	(173)	(234)

	Total extra	Size extra	T. H. extra
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ASWG #7 x ¾" x 4".....	\$327	(\$181)	(\$146)
ASWG #7 x ¾" x 5".....	\$357	(211)	(146)

ASWG #11½ x ½" x 2½".....	\$312	(\$167)	(\$145)	
ASWG #11 x ½" x 2½".....	305	(160)	(145)	

6 d #11½ x ¾" x 2"	\$312	(\$167)	(\$145)
7 d #11½ x ¾" x 2½"	312	(167)	(145)
8 d #11½ x ¾" x 2½"	305	(160)	(145)

ASWG #11 x 3/2" x 1 1/2"	\$172	(\$172)		
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				E/G extra
7 d ASWG #11½ x ⅞" x 2½"	\$399	(\$167)	(\$145)	(\$87)
8 d ASWG #11½ x ⅞" x 2½"	401	(189)	(145)	(87)

ASWG #9 x $\frac{9}{16}$ " x 1"	\$341	(\$196)	(\$145)
ASWG #9 x $\frac{9}{16}$ " x 1 $\frac{1}{4}$ "	341	(196)	(145)

(68) Tempered hardened steel H/D galvanized screw siding nails

				H/D extra
7 d ASWG #11½ x ½" x 2½"	\$399	(\$167)	(\$145)	(\$87)
8 d ASWG #11½ x ½" x 2½"	393	(161)	(145)	(87)

SPECIAL ORDER SIZE EXTRAS FOR RING, SCREWED AND FLUTED SHANK SPECIALTY NAILS

[\$/M.T.]

	Gauge							
	4-6½	7-8½	9-10½	11-11½	12-12½	13-13½	14-14½	15-16½
Length:								
¾"			239				415	
1"			222			285	391	423
1-1½"			203	181	189	246	357	383
1½-1¾"			197	173	184	222	343	365
2-2½"			189	169	177	201	307	
2½-3"		169	169	163	169	184		
3½-4"	214	169	169					
4½ up	230	203						

Note.—Size extras determined from this table apply only to items 50-68.

[FR Doc. 82-32200 Filed 11-24-82; 8:45 am]

BILLING CODE 3510-25-M

Amendment of Initiation of Countervailing Duty Investigation; Certain Carbon Steel Pipe and Tube Products From South Africa

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of amendment to notice of initiation of a countervailing duty determination.

SUMMARY: On October 26, 1982, the Department of Commerce issued a notice of initiation of a countervailing duty investigation on certain carbon steel pipe and tube from South Africa. This notice was published in the *Federal Register* on October 29, 1982 (47 FR 49057). The section entitled "Scope of Investigation" in that notice needs to be clarified.

A new "Scope of Investigation" section is published in this notice which replaces the entire "Scope of Investigation" section in the previous notice. In addition, the person to contact for further information has been changed.

Scope of Investigation (Revised)

For purposes of this investigation, the term "certain carbon steel pipe and tube products" includes electric resistance welded (ERW) carbon steel pipes and tubes with walls not thinner than 0.065 inch of circular cross section, and not over 4.5 inches in outside diameter as currently provided for in items 610.3241 and 610.3244 of the *Tariff Schedules of the United States Annotated (TSUSA)*; and ERW cold rolled carbon steel pipes and tubes with walls not thinner than

0.065 inch or not exceeding 0.1 inch, of any circular cross-sectional diameter as currently provided for in item 610.3227 of the TSUSA; and ERW carbon steel pipes and tubes of any square or rectangular dimension with a wall thickness not less than 0.156 inch, as currently provided for in item 610.3955 of TSUSA; and ERW carbon steel pipes and tubes, not suitable for use in the manufacture of ball or roller bearings, of any square or rectangular dimension as currently provided for in item 610.4975 of the TSUSA.

Excluded from this investigation are ERW carbon steel pipes and tubes suitable for use in boilers, superheaters, heat exchangers, condensers, feedwater heaters, or ball or roller bearings, or conforming to A.P.I. specifications for oil well tubing and casing, or cold drawn pipes and tubes, or ERW carbon steel pipes and tubes imported with couplings.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

Steven K. Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, Telephone: (202) 377-3965.

Dated: November 19, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-32412 Filed 11-24-82; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation Anhydrous and Aqua Ammonia From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of anhydrous and aqua ammonia receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before January 21, 1983.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

John M. Davies, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3174.

SUPPLEMENTARY INFORMATION:

Petition

On October 28, 1982, we received a petition from counsel on behalf of the U.S. industry producing anhydrous and aqua ammonia. In compliance with the filing requirements of §355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of anhydrous and aqua ammonia receive, directly or indirectly, bounties or grants

within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and therefore section 303 of the Act applies to this investigation. Under this section, since certain of the merchandise being investigated is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission (ITC) is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry. Similarly, with respect to the merchandise which is nondutiable, no injury determination is required by the ITC because there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require such a determination for nondutiable merchandise from Mexico.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on anhydrous and aqua ammonia, and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of anhydrous and aqua ammonia, as described in the "Scope of the Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by January 21, 1983.

Scope of the Investigation

Anhydrous and aqua ammonia covered in this investigation are used in the United States primarily for production of fertilizers and to a lesser extent for production of explosives, fibers, plastics, and other petrochemical products.

Anhydrous ammonia used chiefly for fertilizers or as an ingredient in the manufacture of fertilizers is imported duty-free under item 480.6540 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Liquid anhydrous ammonia imported under TSUSA item 417.2200 is dutiable but can be imported duty-free from qualified countries under the Generalized System of Preferences (GSP). Imports of liquid anhydrous ammonia from Mexico were duty-free under GSP until April 1982, when such

imports were taken off GSP and made dutiable.

Aqua ammonia used chiefly for fertilizers or as an ingredient in the manufacture of fertilizers is imported duty-free under TSUSA item 480.6560, a general category which covers nitrogenous fertilizers and fertilizer materials not specifically provided for in the TSUSA. Imports of aqua ammonia used for purposes other than fertilizers are dutiable under TSUSA item 417.2000.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of anhydrous and aqua ammonia receive the following benefits which constitute bounties or grants: preferential prices on natural gas used to manufacture ammonia; preferential investment incentives in priority regions; preferential benefits from government ownership of the ammonia industry; preferential federal and state tax incentives; preferential financing; government-financed technology development; government financed industrial promotion; preferential vessel, freight, terminal, and insurance benefits; internal transportation benefits; preferential rates on commercial risk insurance; preferential credits for export production; free export marketing promotion; import duty rebates on equipment used in export production; and a discriminatory dual exchange rate system.

A specific allegation in the petition concerns federal tax incentives received by the ammonia industry under the export tax certificate program known as *Certificado de Devolucion de Impuesto (CEDI)*. The government of Mexico notified us that as of August 25, 1982, it has discontinued the eligibility of products for the CEDI program. However, since the CEDI program has not been eliminated, we are including it as part of our investigation to determine whether manufacturers, producers, or exporters in Mexico of anhydrous and aqua ammonia in fact receive benefits under this program.

Gary N. Horlick,
Deputy Assistant Secretary for Import Administration.

November 17, 1982.
[FR Doc. 82-32421 Filed 11-24-82; 8:45 am]
BILLING CODE 3510-25-M

Industrial Nitrocellulose From France; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of Preliminary Antidumping Determination.

SUMMARY: The preliminary determination of industrial nitrocellulose from France is being postponed, and we intend to issue it not later than December 23, 1982.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Stuart Keitz or Betty H. Laxague, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Telephone: (202) 377-1769/3601.

SUPPLEMENTARY INFORMATION: On July 28, 1982, we announced our initiation of an antidumping investigation to determine whether industrial nitrocellulose from France is being, or is likely to be, sold in the United States at less than fair value within the meaning of the antidumping law (47 FR 32557). The notice stated that we would issue a preliminary determination by December 9, 1982.

As detailed in the notice of initiation of the antidumping investigation, the petition alleges that imports from France of industrial nitrocellulose are being, or are likely to be, sold in the United States at less than fair value. Because of the number and complexity of the adjustments to be considered, we believe that this case is extraordinarily complicated in accordance with section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), and additional time is necessary to make the preliminary determination. We intend to issue a preliminary determination not later than December 23, 1982.

This notice is published pursuant to section 733(c)(2) of the Act.

Gary N. Horlick,
Deputy Assistant Secretary for Import Administration.

November 19, 1982.
[FR Doc. 82-32423 Filed 11-24-82; 8:45 am]
BILLING CODE 3510-25-M

Industrial Nitrocellulose From France; Postponement of Preliminary Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of Preliminary Countervailing Duty Determination.

SUMMARY: The preliminary determination of industrial nitrocellulose from France is being postponed, and we intend to issue it not later than December 22, 1982.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

Gary Taverman, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION: On October 4, 1982, we announced our initiation of a countervailing duty investigation to determine whether the government of France is giving its producers, manufacturers, or exporters of industrial nitrocellulose certain benefits which constitute bounties or grants within the meaning of the countervailing duty law (47 FR 44807). The notice stated that we would issue a preliminary determination by December 8, 1982.

As detailed in the notice of initiation of the countervailing duty investigation, the petition alleges several subsidy programs that the government of France provides to producers and exporters of industrial nitrocellulose, including preferential financing, equity investments, operating and equipment subsidies, and subsidies on labor, energy, and other inputs. Some of these programs have never been investigated before by the Department of Commerce. We have determined that the government of France and the other parties concerned are cooperating and that additional time is necessary because of the number and complexity of the alleged subsidy practices, the novelty of the issues presented, and the need to determine the extent to which the alleged subsidy programs are used by French manufacturers, producers, and exporters. For these reasons we determine that this case is extraordinarily complicated in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), and we intend to issue a preliminary determination not later than December 22, 1982.

This notice is published pursuant to section 703(c)(2) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

November 19, 1982.

[FR Doc. 82-32424 Filed 11-24-82; 8:45 am]

BILLING CODE 3510-25-M

Polychloroprene Rubber From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on polychloroprene rubber from Japan. The review covers three of the five known manufacturers and/or exporters of this merchandise to the United States and the period December 1, 1980 through November 30, 1981. There were no known shipments to the United States by these three firms during the period and there are no known unliquidated entries for the period.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties equal to the margins calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:

Arthur N. DuBois or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 14746) the final results of its last administrative review of the antidumping finding on polychloroprene rubber from Japan (38 FR 35393, December 6, 1973) and announced its intent to conduct the next administrative review by the end of December 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 446.1521 and 446.2000 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of five manufacturers and/or exporters of Japanese polychloroprene rubber to the United States. The review covers three of the five firms and the period December 1, 1980 through November 30, 1981. There were no known shipments to the United States by these three firms

during the period and there are no known unliquidated entries for the period.

As part of the last administrative review of this case the Department covered shipments manufactured by Denki and exported by Hoei Sangyo. Recently we learned that there are unliquidated entries of this merchandise exported by Hoei Sangyo and manufactured by firms other than Denki. The Department is deferring consideration of those shipments until a subsequent review.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, for the period December 1, 1980 through November 30, 1981, the following margins exist:

Manufacturer/Exporter:	Margin
Denki.....	*0%
Suzugo Corporation.....	*55%
Denki/Hoei Sangyo.....	*55%

*No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Japanese polychloroprene rubber from these three firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For the 2 firms not covered by this or a prior review, Toyo Soda and Showa Neoprene, the cash deposit rate shall be 55%, the rate calculated during the original fair value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1))

and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,
Deputy Assistant Secretary for Import
Administration.

November 22, 1982.

[FR Doc. 82-32422 Filed 11-24-82; 8:45 am]
BILLING CODE 3510-25-M

Preliminary Affirmative Countervailing Duty Determination Yarns of Polypropylene Fibers From Mexico

AGENCY: International Trade
Administration, Commerce.

ACTION: Preliminary Affirmative
Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers, as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 11.87 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the product subject to this determination which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on yarns of polypropylene fibers in the amount equal to the estimated net bounty or grant. If this investigation proceeds normally, we will make our final determination by February 2, 1983.

EFFECTIVE DATE: November 26, 1982.

FOR FURTHER INFORMATION CONTACT:
G. Leon McNeill, Office of
Investigations, Import Administration,
International Trade Administration, U.S.
Department of Commerce, 14th Street
and Constitution Avenue N.W.,
Washington, D.C. 20230, telephone: (202)
377-1273.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that there is reason to believe or suspect that the government of Mexico provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), to manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers as described in the "Scope of Investigation" section of this notice.

We estimate the net bounty or grant to be 11.87 percent *ad valorem*.

Case History

On August 26, 1982, we received a petition from Quaker Textile Corporation of Fall River, Massachusetts, on behalf of the U.S. industry producing yarns of polypropylene fibers. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters of yarns of polypropylene fibers in Mexico.

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the yarns of polypropylene fibers are dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to the U.S. industry in question. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on September 21, 1982, we initiated our investigation (47 FR 41609).

We presented a questionnaire concerning the allegations to the government of Mexico at its embassy in Washington, D.C. On November 1, 1982, we received a partial response to the questionnaire. In that response, information was not provided in regard to the Certificates of Fiscal Promotion (CEPROFI) and the Funds for the Promotion of Exports of Mexican Manufactured Products (FOMEX) pre-export financing programs.

On November 18, 1982, one day prior to the date of this preliminary determination, the government of Mexico provided a supplemental response concerning the CEPROFI and pre-export financing FOMEX programs. However, we did not receive this information in sufficient time to allow proper evaluation and analysis of the data for inclusion in this preliminary determination. Therefore, this information has been disregarded for purposes of the preliminary determination. We will consider the information for our final determination.

Scope of Investigation

The merchandise covered by this investigation is yarns of polypropylene fibers from Mexico. The imported merchandise is currently provided for in items 310.0214, 310.1114, 310.5015, 310.5051, 310.6029, 310.6038 and 310.8000 of the *Tariff Schedules of the United States Annotated*. Yarns of polypropylene fibers are used primarily in the manufacture of fabrics,

particularly those for upholstery. The major industrial raw materials for these yarns are man-made fibers of staple, continuous filament and bulked continuous filament made from polypropylene resin.

Industrias Polifil, S.A. de C.V. is the only known producer and exporter of yarns of polypropylene fibers in Mexico. The period for which we are measuring subsidization is the first half of 1982.

Analysis of Programs

Based upon our analysis to date of the petition and the November 1, 1982, response to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers under the programs listed below.

A. The CEPROFI Program. In 1979, the government of Mexico introduced a four-year National Industrial Development Plan (NIDP) which spells out broad economic goals for the country. Tax credits, which are called Certificates of Fiscal Promotion (CEPROFI), are used to promote the NIDP goals, which include increased employment, regional decentralization, industrial development, the promotion of small and medium-sized firms, and the promotion of exports.

CEPROFI certificates are non-transferable tax certificates of a set value which may be used for a five-year period to pay various federal taxes. CEPROFI certificates are granted for carrying out investments in "priority" industrial activities. The amount of the CEPROFI is based upon the location of the activity, the number of jobs generated, the value of the investments in new plant and equipment, or the value of the purchase of capital goods produced in Mexico.

In our questionnaire presented on September 22, 1982, we asked for information concerning CEPROFI certificates. The government of Mexico, however, did not respond to our questions on this program in its submission of November 1, 1982. Although the government provided a response on the CEPROFI program on November 18, 1982, the information was not received in sufficient time for inclusion in this preliminary determination. Accordingly, on the basis of the best information available, we preliminarily determine the estimated net bounty or grant conferred by this program to be 4.91 percent *ad valorem*.

This is the rate determined for the CEPROFI program in the *Polypropylene Film from Mexico* preliminary affirmative countervailing duty determination of September 23, 1982 (47 FR 42015).

B. Preferential Financing Programs. We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers under preferential pre-export and export financing programs. FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department, with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions which establish contracts for lines of credit with manufacturers and exporters.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export financing must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the export loans. The maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent in Mexican pesos, and the maximum annual interest rate for FOMEX export financing is 6 percent in the currency of the country of importation.

1. FOMEX Pre-export Financing Program. The government of Mexico's response of November 1, 1982, states that Industrias Polifil, S.A. de C.V. received export financing loans, but did not include information concerning the number and amount of FOMEX pre-export financing loans received by this company. Although information on FOMEX pre-export loans was submitted to the Department on November 18, 1982, it was not received in sufficient time for inclusion in this preliminary determination. Accordingly, on the basis of the best information available, we preliminarily determine the estimated net bounty or grant conferred by the FOMEX pre-export financing program to be 4.76 percent *ad valorem*. This is the rate for the FOMEX pre-export financing

program determined in the *Pectin from Mexico* preliminary affirmative countervailing duty determination of September 17, 1982 (47 FR 42014).

2. FOMEX Export Financing Program. The government of Mexico's response states that Industrias Polifil, S.A. de C.V. received export financing FOMEX loans at 6 percent interest. We preliminarily find this program to be countervailable and determine the rate of 2.20 percent *ad valorem* as the benefit for the FOMEX export financing program.

We used as a benchmark for the commercial rate of interest in Mexico the national average rate for comparable short-term dollar-denominated loans. During the first six months of 1982, we preliminarily determined that comparable dollar-denominated loans were available at 18.03 percent. This rate was determined from information supplied by the Federal Reserve Board. To arrive at the 2.20 percent *ad valorem* rate, we computed the difference in interest rates between the FOMEX export loans received by Industrias Polifil, S.A. de C.V. during the period January 1, 1982 through June 30, 1982, and the benchmark commercial rate of interest. We then allocated this amount over the value of exports to the U.S. of yarns of polypropylene fibers during the same period for which export financing loans were obtained.

Combining the 2.20 percent *ad valorem* benefit rate for export financing with the 4.76 percent *ad valorem* benefit rate for loans granted for pre-exports, we calculate a total bounty or grant under the FOMEX program of 6.96 percent *ad valorem*.

II. Program Preliminarily Determined To Be Suspended and Not Used Recently

We preliminarily determine that the Certificado de Devolucion de Impuesto (CEDI) program which was described in the notice of "Initiation of Countervailing Duty Investigation" is countervailable. Because the CEDI program has been suspended, the Department preliminarily determines that it is not being used. If this program were to be reactivated, the Department would review its application to respondent in any annual review under section 751 of the Act, should this investigation result in issuance of a countervailing duty order.

The CEDI is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise or, if national insurance and transportation are utilized, a percentage of the c.i.f. value of the exported product. The

Secretary of Commerce of Mexico is responsible for setting the CEDI rate, which is not published. Exporters are required to apply for each CEDI by providing to the Ministry of Commerce (SECOM) documentation with respect to each individual shipment of qualifying exports. SECOM processes the application and, on approval, instructs the Ministry of Treasury to issue the CEDIs in the amount specified. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes and import duties) over a period of five years from the date of issuance.

The government of Mexico's response gives us no information on use of this program during the first half of 1982. It only states that it discontinued the eligibility of the products under investigation for CEDI tax rebates by an Executive Order published on August 25, 1982, in the *Diario Oficial de la Federacion* (Official Gazette). The order abrogates prior Executive Orders which contained the lists of products eligible to receive CEDI certificates. Discontinuance of the eligibility to apply for the CEDI was effective one day after publication of the Executive Order in the Official Gazette.

Although we believe that exporters of the merchandise under investigation received benefits under the CEDI program during the first half of 1982 the CEDIs ceased to be available after August 25, 1982. We are assuming, as we did in our final affirmative countervailing duty determination on the Mexican *Ceramic Tile from Mexico* (47 FR 20012), that all CEDI certificates were used on a current basis. Therefore, merchandise that was accorded benefits under this program is not likely to enter the United States on or after the date of this preliminary determination.

Verification

In accordance with section 776(a) of the Act, we will verify all the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of yarns of polypropylene fibers from Mexico which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*, and to require a cash deposit or the posting of a bond, for each such entry of the merchandise in the amount of 11.87 percent *ad valorem*.

This suspension will remain in effect until further notice.

Public Comment

In accordance with section 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on December 20, 1982, at the U.S. Department of Commerce, Room D, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by December 13, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

November 19, 1982.

[FR Doc. 82-32420 Filed 11-24-82; 8:45 am]

BILLING CODE 3510-25-M

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program; Notice of Closing Date for Applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is inviting applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP) of NTIA. At the present time, NTIA expects the total amount of funds available for grants under the PTFP will be \$15,000,000. Applicants for grants under PTFP must file their applications on or before February 28, 1983. NTIA anticipates

making grant awards in early September 1983.

AUTHORITY: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390, *et seq.* [Act], as amended by the Public Broadcasting Amendments of 1981, Pub. L. No. 97-35 [1981 Amendments].

FOR FURTHER INFORMATION CONTACT: Persons desiring further information should contact John J. O'Neill, Acting Program Director, PTFP/NTIA/DOC, Room 4625, Washington, D.C. 20230. Telephone (202) 377-5802.

SUPPLEMENTARY INFORMATION:

I. Program Goals.

The goals of this program, as stated in section 390 of the Act, are:

[T]o assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

To accomplish these goals NTIA has adopted a list of priorities which NTIA is publishing as Appendix A to the PTFP Final Rules.

II. Closing Date.

Pursuant to § 2301.10 of the PTFP Final Rules, the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications is February 28, 1983.

III. Eligibility.

To be eligible to apply for or receive a grant under the PTFP, an applicant must be: (A) A public broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (E) a State or local government, or a political or special purpose subdivision of a State.

IV. Application Forms and Regulations.

To apply for a PTFP grant, an applicant must file a *timely* and *complete* application on a current form

approved by the Agency.* All persons and organizations on the PTFP's mailing list will receive a copy of the current application form and the Final Rules shortly. Those not on the mailing list may obtain copies by contacting the PTFP at the address above.

NTIA's Final Rules for the PTFP, which will govern the 1983 grant competition, are being published simultaneously with this Notice. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants, whose applications for funding in fiscal year 1982 had been deferred, will receive pertinent PTFP materials and instructions for requesting reactivation of their application.

Applicants should note that they must comply with the provisions of OMB Circular A-95. This circular requires that any applicant for Federal financial assistance must file a Notification of Intent (NOI) to file such application, or file a complete application with the appropriate State and areawide clearinghouses. NTIA's Interim Regulations require applicants to serve a copy of their completed applications on the appropriate clearinghouse(s) on or before February 28, 1983. Applicants are encouraged to contact the appropriate clearinghouse(s) as early as possible before the NTIA closing date.

V. Filing Applications.

Applicants may deliver applications either by mail or by hand. Applications delivered by mail must be postmarked no later than midnight, February 28, 1983, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. As a proof of mailing, NTIA will accept a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service. (Applicants should note that not all U.S. Postal Service offices uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method. Applicants are encouraged to use registered or at least first class mail.) Applications delivered by hand must be delivered to the above address between 8:00 a.m. and 4:30 p.m. (Eastern Time) daily, except Saturdays, Sundays and Federal holidays, through February 28, 1983. Applicants whose

*The Office of Management and Budget (OMB) has approved the information collection and reporting requirements contained in NTIA's application as required under the Paperwork Reduction Act of 1980. [OMB Approval No. 0660-0003.]

applications are postmarked after midnight February 28, 1983, or are delivered by hand after 4:30 p.m., February 28, 1983, will be notified that their applications will not be considered in the current competition and will be returned.

NTIA requires that all applicants, whose proposed projects need authorization from the Federal Communications Commission (FCC), *must tender an application to the FCC for such authority on or before February 28, 1983.* (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) NTIA will return the applications of any applicant which fails to tender an application to the FCC for any necessary authority on or before February 28, 1983.

(Catalog of Federal Domestic Assistance No. 11.550)

Bernard J. Wunder, Jr.,
Administrator.

[FR Doc. 82-32285 Filed 11-24-82; 8:45 am]
BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Extension of Coverage of Singapore Export Visa and Exempt Certification To Include Textiles and Textile Products of Cotton, Wool, and Man-Made Fibers

AGENCY: Committee for the
Implementation of Textile Agreements.

ACTION: Extending coverage of the
existing Singapore export visa and
exempt certification requirements to
include cotton, wool, and man-made
fiber textiles and textile products in
Categories 300-329 and 360-369, 400-429
and 464-469, and 600-627 and 665-669,
produced or manufactured in Singapore
and exported to the United States.

(A detailed description of the textile
categories in terms of T.S.U.S.A.
numbers was published in the *Federal
Register* on February 28, 1980 (45 FR
13172), as amended on April 23, 1980 (45
FR 27463), August 12, 1980 (45 FR 53506),
December 24, 1980 (45 FR 85142), May 5,
1981 (46 FR 25121), October 5, 1981 (46
FR 48963), October 27, 1981 (46 FR
52409), February 9, 1982 (47 FR 5926),
and May 13, 1982 (47 FR 20654)).

SUMMARY: Under the terms of the
Bilateral Cotton, Wool, and Man-Made
Fiber Textile Agreement of August 21,
1981, as amended, between the
Governments of the United States and
the Republic of Singapore, letters have

been exchanged between the two
governments dated October 4 and 8,
1982 extending coverage of the existing
visa and exempt certification systems to
include cotton, wool, and man-made
fiber textiles and textile products. This
coverage is in addition to the coverage
of cotton, wool, and man-made fiber
apparel products in Categories 330-359,
431-459, and 630-659, described in the
notice published at 47 FR 6683, February
16, 1982. The visa and exempt
certification stamps are not being
changed and the officials of the
Government of the Republic of
Singapore who are authorized to issue
these stamps also remain unchanged at
this time.

EFFECTIVE DATE: January 15, 1983 for
cotton, wool, and man-made fiber
textiles in Categories 300-329 and 360-
369, 400-429 and 464-469, and 600-627
and 665-669, produced or manufactured
in Singapore and exported on and after
that date. Merchandise in the designated
categories, exported before January 15,
1983, will not be denied entry for lack of
a visa or certification.

FOR FURTHER INFORMATION CONTACT:
Ronald J. Sorini, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On
February 16, 1982 a letter dated
February 10, 1982 from the Chairman of
the Committee for the Implementation of
Textile Agreements was published in
the *Federal Register* (47 FR 6683), which
established export visa and exempt
certification mechanisms for cotton,
wool, and man-made fiber apparel
products, produced or manufactured in
Singapore and exported to the United
States on and after April 1, 1982. Under
the terms of the bilateral agreement,
agreement has been reached to extend
coverage of the existing visa and exempt
certification requirements to include
cotton, wool, and man-made fiber
textiles and textile products, in addition
to apparel. Accordingly, the letter
published below from the Chairman of
the Committee for the Implementation of
Textile Agreements to the Commissioner
of Customs amends the directive of
February 10, 1982 to provide for this
extended coverage.

Walter C. Lenahan,
*Chairman, Committee for the Implementation
of Textile Agreements.*

November 19, 1982.

Committee for the Implementation of Textile
Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This letter amends
but does not cancel, the letter of February 10,
1982 from the Chairman of the Committee for
the Implementation of Textile Agreements,
which directed you to prohibit entry for
consumption and withdrawal from
warehouse for consumption of cotton, wool,
and man-made fiber apparel products in
Categories 330-359, 431-459, and 630-659,
produced or manufactured in Singapore and
exported on and after April 1, 1982, for which
the Government of the Republic of Singapore
had not issued an appropriate export visa or
certification for exemption.

Effective on January 15, 1983, the directive
of February 10, 1982 is amended to require
that cotton, wool, and man-made fiber textile
and textile products in Categories 300-329
and 360-369, 400-429 and 464-469, and, 600-
627 and 665-669 produced or manufactured in
Singapore and exported to the United States
on and after January 15, 1983 must also be
visaed or certified for exemption in order to
be entered into the United States for
consumption, or withdrawn from warehouse
for consumption. Merchandise in these
categories which has been exported before
January 15, 1982 shall not be denied entry for
lack of a visa or certification. The visa and
exempt certification stamps are not being
changed at this time, but correct category and
quantity will be required on the visas.

A detailed description of the textile
categories in terms of T.S.U.S.A. numbers
was published in the *Federal Register* on
February 28, 1980 (45 FR 13172), as amended
on April 23, 1980 (45 FR 27463), August 12,
1980 (45 FR 53506), December 24, 1980 (45 FR
85142), May 5, 1981 (46 FR 25121), October 5,
1981 (46 FR 48963), October 27, 1981 (46 FR
52409), February 9, 1982 (47 FR 5926), and
May 13, 1982 (47 FR 20654).

In carrying out the above directions, the
Commissioner of Customs should construe
entry into the United States for consumption
to include entry for consumption into the
Commonwealth of Puerto Rico.

The action taken with respect to the
Government of Republic of Singapore and
with respect to imports of cotton, wool, and
man-made fiber textiles and textile products
from Singapore has been determined by the
Committee for the Implementation of Textile
Agreements to involve foreign affairs
functions of the United States. Therefore,
these directions to the Commissioner of
Customs, which are necessary for the
implementation of such actions, fall within
the foreign affairs exception to the rule-
making provisions of 5 U.S.C. 553. This letter
will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,
*Chairman, Committee for the Implementation
of Textile Agreements.*

[FR Doc. 82-32419 Filed 11-24-82; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1983 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: November 26, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 6, 1982, August 20, 1982, and September 3, 1982, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (47 FR 34181, 47 FR 36467, and 47 FR 38962) of proposed additions to Procurement List 1982, November 12, 1981 (46 FR 55740).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on the current contractors for the commodities and services listed.
- The actions will result in authorizing small entities to produce or provide commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1983:

Class 7520

File, Horizontal, Desk
7520-00-139-4869
7520-00-728-5761

SIC 7349

Janitorial Service, John W. McCormack Post Office and Courthouse, Post Office Square, Boston, Massachusetts.

Janitorial Service, U.S. Custom House, 8 McKinley Square, Boston, Massachusetts.

Janitorial Service, GSA Depot Building 58, Hingham Industrial Park, 349 Lincoln Street, Hingham, Massachusetts.

C. W. Fletcher,
Executive Director.

[FR Doc. 82-32425 Filed 11-24-82; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1983; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1983 services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before December 29, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1983, November 18, 1982 (47 FR 52102):

SIC 7349

Custodial Service, Social Security Administration, Computer Center Building, 6201 Security Boulevard, Baltimore, Maryland.

Janitorial/ Custodial Service, Federal Building and Courthouse, 101 North 5th Street, Muskogee, Oklahoma.

SIC 7349

Janitorial Services, Federal Building, 3002 Colby Avenue, Everett, Washington.

Janitorial Services, Federal Building, 801 Capitol, Way Olympia, Washington.

C. W. Fletcher,
Executive Director.

[FR Doc. 82-32426 Filed 11-24-82; 8:45 am]
BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; New Routine Use Correction

In FR Doc. 82-28011 beginning on page 44830 of the issue for Tuesday, October 12, 1982, on page 44831, the third column, the ninth line, the phrase "may give" should read "may be given".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Sarasota County, Florida; Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Beach Erosion Control Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, is studying erosion control and hurricane protection measures for the Gulf of Mexico shoreline of Sarasota County, Florida. The following alternative actions, not all implementable by the Federal government, are under consideration:

Non-structural

- No action.
- Rezoning of beach area.
- Modification of building codes.
- Construction setback line.
- Moratorium on construction.
- Flood insurance.
- Evacuation planning.
- Establish a no-growth program.
- Relocation of structures.
- Flood proofing of structures.
- Condemnation of land and structures.
- Various combinations of above.

Structural

- Remove detrimental structures.
- Beach revetment.
- Beach fill with periodic nourishment.
- Beach fill with periodic nourishment stabilized by offshore breakwaters.
- Beach nourishment with maintenance material from nearby passes and inlets.
- Beach fill with periodic nourishment stabilized by groins.
- Seawalls.

Stabilization of beaches and dunes by vegetation.

Various combinations of above.

The scoping will include the issuance of a scoping letter describing the study and requesting comments from affected Federal, State, and local agencies. Issues to be analyzed in the DEIS will be determined during scoping. No cooperating agencies are involved. In accordance with the Fish and Wildlife Coordination Act, participation in the planning process has been initiated with the U.S. Fish and Wildlife Service (FWS) and participation will also be solicited from the U.S. National Marine Fisheries Service (NMFS) and the State of Florida. Consultation will be accomplished in accordance with Section 7 of the Endangered Species Act and the Archeological and Historic Preservation Act. If a selected plan involves discharge of material into waters of the United States, the discharge will be specified by application of the criteria of Section 404(b), Federal Water Pollution Control Act.

A scoping meeting is not contemplated. The DEIS will be made available to the public in May 1983.

Questions concerning the proposed action and DEIS should be addressed to: Mr. Jeffrey M. Carlton, Environmental Studies Section, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, FL 32232, Telephone: (904) 791-2202.

Dated: November 17, 1982.

Alfred B. Devereaux, Jr.,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82-32414 Filed 11-24-82; 8:45 am]

BILLING CODE 3710-AJ-M

Coastal Engineering Research Board; Meeting Postponed

AGENCY: Coastal Engineering Research Board, DOD.

ACTION: Notice of postponement of meeting.

Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the postponement of the 39th meeting of the U.S. Army Coastal Engineering Research Board.

The meeting, originally scheduled for 30 November and 1-2 December 1982 at the Wilmington Hilton, 301 N. Water Street, Wilmington, N.C., has been postponed until further notice.

The Notice of the meeting was published in the **Federal Register** on

October 12, 1982, Vol. 47, No. 197, page 46185.

John O. Roach, II,
Army Liaison Officer with the Federal Register.

[FR Doc. 82-32489 Filed 11-24-82; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP80-547-008]

NGPL-Canyon Compression Co.; Petition to Amend

November 17, 1982.

Take notice that on November 12, 1982, NGPL-Canyon Compression Co. (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP80-547-008 a petition to amend the order issuing a certificate of public convenience and necessity on March 30, 1982, in Docket No. CP80-547-000 (18 FERC ¶61,280) pursuant to Section 7(c) of the Natural Gas Act to reduce the contract demand service authorized to be rendered for Mountain Fuel Supply Company (Mountain Fuel) from 12,000 Mcf per day to 6,000 Mcf per day, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is authorized to render 12,000 Mcf per day of contract demand compression service for Mountain Fuel by means of Petitioner's facilities in the Whitney Canyon Area, Uinta County, Wyoming. Mountain Fuel is said now to have determined that it will require 6,000 Mcf per day of contract demand to satisfy its current gas supply projections from the area. Petitioner's other customers, Natural Gas Pipeline Company of America and Colorado Interstate Gas Company, are said not to object to the reduction of contract demand of Mountain Fuel.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 6, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in

any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-32398 Filed 11-24-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-5-000]

Wisconsin Public Power Inc. Systems, et al. v. Wisconsin Public Service Corp.; Filing

November 19, 1982.

Take notice that on November 9, 1982, Wisconsin Public Power Incorporated System (the "System") and the Cities of Algoma, Eagle River, New Holstein, Sturgeon Bay and Two Rivers, Wisconsin (the "Cities") (the System and the Cities, collectively the "Complainants") filed a complaint against Wisconsin Public Service Corporation ("WPS"). The complaint alleges that WPS has violated section 205 of the Federal Power Act.

The Complainants request that the Commission issue an order finding that WPS has violated section 205 of the Act, require WPS to make 10 Mw of interruptible power available to the System under WPS' standard form interruptible contract and grant such other relief as may be appropriate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 82-32399 Filed 11-24-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal

Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 4, 1983; Tuesday, January 11, 1983; Tuesday, January 18, 1983; and Tuesday, January 25, 1983 at 10:00 a.m. in Room 3D321, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c) (2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

November 19, 1982.

[FR Doc. 82-32361 Filed 11-24-82; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session 16 December 1982 at the Naval Station, Treasure Island, San Francisco, California 94130.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App 1, 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b) (c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.
November 19, 1982.

[FR Doc. 82-32379 Filed 11-24-82; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electronic Devices (AGED) will meet in closed session on 16 December 1982 at the Varian Associates, 611 Hansen Way, Palo Alto, California 94303.

The Mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter

wave devices, and passive devices. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App 1, 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

November 19, 1982.

[FR Doc. 82-32380 Filed 11-24-82; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Application and Authorization For Access to CONFIDENTIAL Information (DD Form 48-2).

The Defense Investigative Service uses this form by which contractors participating in the Defense Industrial Security Program obtain personal data from a United States citizen being considered for a CONFIDENTIAL personnel security clearance granted by a contractor. The form is prepared jointly by the person being considered for the clearance and by the contractor. Completion of this form is a prerequisite to the granting of a CONFIDENTIAL clearance by a contractor. The form helps save government resources by decreasing the time it takes to grant a personnel security clearance at the CONFIDENTIAL level.

Individual/Contractor: 130,000 responses; 43,290 hours.

Forward comments to Edward Springer, OMB Desk Office, Room 3235,

NEOB, Washington, D.C. 20503, and John V. Wenderoth, DoD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone, (202) 697-1195.

A copy of the information proposal may be obtained from P. L. Tenney, Defense Investigative Service, Industrial Security Program Division, Room 5323, 1900 Half Street, S.W., Washington, D.C. 20324, telephone (202) 693-1264.

M. S. Healy,

*OSD Federal Register Liaison Officer,
Department of Defense.*

November 19, 1982.

[FR Doc. 82-32377 Filed 11-24-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Grant Applications; Office of Bilingual Education and Minority Languages Affairs

AGENCY: Department of Education.

ACTION: Notice of Extension of Closing Dates for Transmittal of New Applications for Fiscal Year 1982 Assistance under the Basic Projects Program (84.003D) and the Demonstration Projects Program (84.003B).

SUMMARY: This notice extends the closing date of January 7, 1983 to January 26, 1983 for the transmittal of new applications under the Basic Projects Program (84.003D). This notice also extends the closing date of January 12, 1983 to January 28, 1983 for the transmittal of new applications under the Demonstration Projects Program (84.003B). The application notices for these programs, published in the *Federal Register* on October 20, 1982 (47 FR 46743, 46745), provide detailed information concerning the Basic Projects Program and the Demonstration Projects Program.

FOR FURTHER INFORMATION: Inquiries concerning these extension dates should be addressed to the Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, S.W. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245-2961.

(Catalog of Federal Domestic Assistance No. 84.003, Bilingual Education)

Jesse M. Soriano,

*Director, Office of Bilingual Education, and
Minority Languages Affairs.*

[FR Doc. 82-32428 Filed 11-24-82; 8:45 am]

BILLING CODE 4000-01-M

Discretionary Grant Programs Under the Rehabilitation Act of 1973, as Amended; Application Notice Establishing Closing Dates for Transmittal of Fiscal Year 1983 Noncompeting Continuation Applications

AGENCY: Department of Education.

ACTION: Application notices establishing closing dates for transmittal of fiscal year 1983 noncompeting continuation applications.

SUMMARY: The purpose of these application notices is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for *noncompeting continuation* grants awarded by the Department of Education under Titles III and VII of the Rehabilitation Act of 1973, as amended.

Organization of Notice

This notice covers certain discretionary grant programs administered by the Rehabilitation Services Administration within the Department of Education that are expected to be funded in Fiscal Year 1983.

This notice contains two parts. Part I includes, in chronological order, the list of all closing dates covered by this notice. Part II consists of the individual application announcements for each program. These announcements are in the same order as the closing dates listed in Part I.

The budget estimates in the individual application notices are based on the President's Fiscal Year 1983 Budget Request and are subject to change by the Congress.

Instruction for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of Applications: In order to be assured of consideration for funding, applications for *noncompeting continuation projects* should be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document. If a noncompeting continuation application is late, the U.S. Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail: Except where specified otherwise immediately below and in the individual program announcements, applications for *noncompeting continuation projects*

must be addressed to the Department of Education Application Control Center, Attention: (Appropriate CFDA No.), Washington, D.C. 20202.

Note.—Applicants for programs under 84.128G (Handicapped Migratory Agricultural Service Projects), 84.129 (Rehabilitation Long-Term Training Projects, except in the field of prosthetics-orthotics and projects of national scope), and 84.129D (Rehabilitation Continuing Education) are required to send applications to the Regional Offices of the U.S. Department of Education. The individual program announcements for these programs specifically direct applicants to transmit applications to the appropriate Regional Office. In these cases applications must be mailed or hand delivered to the appropriate address below:

Region I: RSA Regional Commissioner, Department of Education, OSERS, John F. Kennedy Federal Building, Room E-400, Government Center, Boston, Massachusetts 02203.

Region II: RSA Regional Commissioner, Department of Education, OSERS, 26 Federal Plaza, Room 4106, New York, New York 10278.

Region III: RSA Regional Commissioner, Department of Education, OSERS, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101.

Region IV: RSA Regional Commissioner, Department of Education, OSERS, 101 Marietta Street, N.W., Suite 903, Atlanta, Georgia 30323.

Region V: RSA Regional Commissioner, Department of Education, OSERS, 300 South Wacker Drive, 15th Floor, Chicago, Illinois 60606.

Region VI: RSA Regional Commissioner, Department of Education, OSERS, 1200 Main Tower Building, Room 1400, Dallas, Texas 75202.

Region VII: RSA Regional Commissioner, Department of Education, OSERS, 324 E. 11th Street, 11 Oak Building, 10th Floor West, Kansas City, Missouri 64106.

Region VIII: RSA Regional Commissioner, Department of Education, OSERS, Federal Office Building, Room 982, 1961 Stout Street, Denver, Colorado 80202.

Region IX: RSA Regional Commissioner, Department of Education, OSERS, Federal Office Building, 50 United Nations Plaza, San Francisco, California 94102.

Region X: RSA Regional Commissioner, Department of Education, OSERS, 2901 Third Avenue (MS 111), Seattle, Washington 98101.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: Applications for *noncompeting continuation grants* must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

OR

To the appropriate Regional Office at the address given above..

The Application Control Center will accept hand-delivered applications between 8:30 a.m. and 4:30 p.m. (local time) daily, except Saturdays, Sundays, and Federal holidays.

The Regional Offices will accept hand delivered-applications between 8:30 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

CFDA No.	Program	Closing date
84.128A	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals.	January 14, 1983.
84.128E	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (Spinal Cord Injury System Projects).	Do.
84.128G	Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects.	Do.
84.132	Centers for Independent Living...	Do.
84.129	Rehabilitation Long-Term Training Projects.	Feb. 8, 1983.
84.129D	Rehabilitation Continuing Education Programs.	Feb. 15, 1983.
84.128B	Projects With Industry	Do.

Part II—Application Announcements for Each Program

84.128A—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals

Closing Date: January 14, 1983—Noncompeting Continuations.

Authority for this program is contained in Section 311(a)(1) of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 777a(a)(1))

Awards are made under this program to States and public and other nonprofit agencies and organizations.

The purpose of this program is to support projects designed to expand or otherwise improve vocational rehabilitation services and other services for severely handicapped individuals.

Available Funds: The total amount of funds awarded under this program in Fiscal Year 1982 (excluding spinal cord injury projects) was \$4,014,000; of this amount \$3,969,000 was for noncompeting continuation projects and \$45,000 was for one new project. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that \$964,000 will be available for noncompeting continuation projects in Fiscal Year 1983. An estimated 8 noncompeting continuation projects will be awarded at an average project cost of about \$120,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of the application not exceed 15 pages in length. The Secretary further urges that only the information required be submitted.

Applicable Regulations: The following regulations are applicable to this program;

(a) Regulations governing Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (34 CFR Parts 369 and 373); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further Information: Harold F. Shay, Director, Division of Special Projects, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., Room 3321, Mary E. Switzer Building, Washington, D.C. 20202. Telephone: (202) 245-0079.

84.128E—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (Spinal Cord Injury System Projects)

Closing Date: January 14, 1983—Noncompeting Continuations.

Authority for this program is contained in Section 311(a)(1) of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 777a(a)(1)).

Awards are made under this program to States and public and other nonprofit agencies and organizations.

The purpose of this program is to support projects designed to expand or otherwise improve vocational rehabilitation services and other rehabilitation services for severely handicapped individuals including individuals with spinal cord injuries. Projects serving exclusively individuals with spinal cord injuries are included in the list of authorized project activities set forth in the program regulations in 34 CFR 373.10.

Available Funds: The total amount of funds awarded under this program for spinal cord injury projects in Fiscal Year 1982 was \$4,831,000; of this amount \$285,000 was for noncompeting continuation project extensions and \$4,546,000 was for new projects. At this time the Fiscal Year 1983 appropriation for spinal cord injury projects is undetermined. It is estimated that \$4,600,000 will be available for noncompeting continuation projects in Fiscal Year 1983. An estimated 17 noncompeting continuation projects will be awarded with an average project cost of about \$270,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of the application not exceed 15 pages in length. The Secretary

further urges that only the information required be submitted.

Applicable Regulations: The following regulations are applicable to this program:

(a) Regulations governing Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (34 CFR Parts 369 and 373); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further Information: Harold F. Shay, Director, Division of Special Projects, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245-0079.

84.128G—Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects

Closing Date: February 1, 1983—Noncompeting Continuations

Authority for this program is contained in Section 312 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 777b).

Awards are made under this program to State vocational rehabilitation agencies or local agencies administering a vocational rehabilitation program under written agreements with State agencies.

The purpose of this program is to support projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

Available Funds: The total amount of funds awarded under this program for Fiscal year 1982 was \$942,000. All funded projects were noncompeting continuations. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that 2 noncompeting continuation projects will be awarded at an average project cost of about \$105,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of the application not exceed 15 pages in length. The Secretary

further urges that only the information required be submitted.

Applicants applying for assistance under this program must submit their applications to the appropriate Regional Office.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects Program (34 CFR Parts 369 and 375); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further Information: Harold F. Shay, Director, Division of Special Projects, Rehabilitation Services Administration, U.S. Department of Education, room 3321, Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-0079.

84.132—Centers for Independent Living

Closing date: February 1, 1983—Noncompeting Continuations.

Authority for this program is contained in Section 711 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 796e).

Awards are made under this program to the designated State vocational rehabilitation unit. Awards may also be made to local public agencies or private nonprofit organizations within a State.

The purpose of this program is to establish and operate centers for independent living which offer a combination of independent living services for severely handicapped individuals or groups of severely handicapped individuals so that they may live more independently in family and community, or secure and maintain employment, with the maximum degree of self-direction.

Available funds: The total amount of funds awarded under this program for Fiscal Year 1982 was \$17,280,000; of this amount \$14,597,000 was for noncompeting continuation projects and \$2,683,000 was for new projects. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that \$6,268,000 will be available for noncompeting continuation projects in Fiscal Year 1983. An estimated 37 noncompeting continuation projects will be awarded at an average project cost of about \$170,000. Funding will be at approximately the same level as was awarded in Fiscal Year 1982. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of the application not exceed 15 pages in length. The Secretary further urges that only the information required be submitted.

Applicable regulations: Regulations governing this program include the following:

(a) Regulations governing the Centers for Independent Living Program (34 CFR Part 366); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: Harold F. Shay, Director, Division of Special Projects, Rehabilitation Services Administration, U.S. Department of Education, Room 3321, Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-0079.

84.129—Rehabilitation Long-Term Training Projects

Closing date: February 8, 1983—Noncompeting Continuations.

Authority for this program is contained in Section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774).

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

The purpose of the Rehabilitation Long-Term Training Program is to support projects designed for training personnel available for employment in public or private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped.

Available funds: The total amount of funds awarded for the support of Rehabilitation Long-Term Training projects in Fiscal Year 1982 was \$13,469,000. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that \$12,579,000 will be available for Rehabilitation Long-Term Training noncompeting continuation training projects for Fiscal Year 1983. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is

otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of the application not exceed 15 pages in length. The secretary further urges that only the information required be submitted.

Applicants applying for assistance under this program must submit their applications to the appropriate Regional Office, except for projects in the field of prosthetics-orthotics and projects of national scope, which will be submitted to the Application Control Center.

Applicable regulations: Regulations applicable to this program include the following:

- (a) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386); and
- (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: Martin W. Spickler, Ph.D., Director, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, Room 3329, Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-0075.

84.129D—Rehabilitation Continuing Education Projects

Closing date: February 15, 1983—Noncompeting Continuations.

Authority for this program is contained in Section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774).

Awards are made under this program to State vocational rehabilitation agencies, and other public or nonprofit agencies and organizations, including institutions of higher education.

The purpose of this program is to support training centers that serve either a Federal region or another multi-State geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent training needs of rehabilitation personnel employed in public and nonprofit programs providing rehabilitation services to severely physically and mentally disabled individuals.

Available funds: The total amount of funds awarded under this program for Fiscal Year 1982 was \$2,000,000. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that \$2,000,000 will be available for noncompeting continuation projects in Rehabilitation Continuing Education in Fiscal Year 1983 to be distributed within each Federal Region as follows:

Region I.....	\$168,346
Region II.....	\$194,853
Region III.....	\$234,404
Region IV.....	\$285,093
Region V.....	\$227,001
Region VI.....	\$230,738
Region VII.....	\$164,045
Region VIII.....	\$150,439
Region IX.....	\$192,598
Region X.....	\$152,483

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of the application not exceed 15 pages in length. The Secretary further urges that only the information required be submitted.

Applicants applying for assistance

under this program must submit their applications to the appropriate Regional Office.

Applicable regulations: Regulations applicable to this program include the following:

- (a) Regulations governing the Rehabilitation Continuing Education Program (34 CFR Parts 385 and 389); and
- (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: Martin W. Spickler, Ph. D., Director, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, Room 3329, Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-0075.

84.128B—Projects With Industry

Closing date: February 15, 1983—Noncompeting Continuations.

Authority for this program is contained in section 621 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 795g).

Agreements are made under this program with employers and profit-making and nonprofit organizations, including any industrial, business or commercial enterprise; labor organization; community trade association; rehabilitation facility; or any other agency or organization with the capacity to arrange, coordinate or conduct training and other employment programs and provide supportive services and assistance to handicapped individuals in a realistic work setting.

The purpose of this program is to provide handicapped individuals with training, employment, and supportive services and assistance within business, industry, or other realistic work settings in order to prepare them for competitive employment and permit them to maintain their employment.

Available funds: The total amount of funds available under this program in Fiscal Year 1982 was \$7,500,000. At this time, the Fiscal Year 1983 appropriation

is undetermined. It is estimated that \$1,750,000 will be available for Fiscal Year 1983 for noncompeting continuations. An estimated 15 noncompeting continuation projects will be awarded with an average project totaling \$117,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of applications not exceed 15 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Projects with Industry Program (34 CFR Parts 369 and 379); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: Harold F. Shay, Director, Division of Special Projects, Rehabilitation Services Administration, U.S. Department Education, Room 3321, Mary E. Switzer Building, Washington, D.C. 20202. Telephone: (202) 245-0079.

Dated: November 22, 1982.

George A. Conn,
Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 82-32431 Filed 11-24-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the *Federal Register* on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval since November 12, 1982.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of

the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Friday, November 12, 1982.

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., NW., Washington, D.C. 20585, (202) 252-2308.

Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395-7340.

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395-3087.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; comments should also be provided Mr. Gross. If you anticipate commenting on a form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., November 19, 1982.

Yvonne M. Bishop,
Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No.	Form title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA-174	Sales of Liquefied Petroleum Gases.	Extension	Annual	Mandatory	Suppliers of Liquefied petroleum gases with annual sales of 100,000 gallons or more.	3,400	6,800	Form EIA-174 is designed to collect data on sales of liquefied petroleum gases and ethane in the United States. Data are published in the Petroleum Supply Annual. Data are also used as input to the Federal Energy Data System and the "Short Term Monthly Demand, Forecasting Model."
FERC-423	Monthly Report of Cost and Quality of Fuels for Electric Plants.	Revision	Monthly	Mandatory	Electric Utility Companies.	750	18,000	Form FERC-423 collects data on the cost and quality of fuels delivered to electric utility plants. Data are used in the evaluation of individual utility costs and practices, in rate cases and in periodic reviews to ensure efficient use of resources. Data are also published by EIA.

**Federal Energy Regulatory
Commission****[Project No. 6773-000]****Walnut Valley Water District;
Application for Exemption of Small
Conduit Hydroelectric Facility**

November 19, 1982.

Take notice that on October 18, 1982, The Walnut Valley Water District (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) [16 U.S.C. Section 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Joint Water Line Hydroelectric Project (FERC Project No. 6773) would be located on an existing Applicant's water supply pipeline in Los Angeles County, near Walnut, CA. Correspondence with the Applicant should be directed to: Mr. Ed Biederman, General Manager, The Walnut Valley Water District, 271 South Brea Canyon Rd., Walnut, CA 91789.

Purpose of Project—The electrical energy produced at the site would be sold to Southern California Edison Company via an existing transmission line.

Project Description—The proposed project would consist of a powerhouse to contain two generating units with a total rated capacity of 195 kW operating under a head of 123 feet.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine

Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 30 of the Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR

385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 3, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,
Secretary.**

[FR Doc. 82-32368 Filed 11-24-82; 8:45 am]

BILLING CODE 6717-01-M

[Volume 777]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: November 19, 1982.

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES								

RECEIVED: 10/21/82 JA: PA								

-ANGARMAN ASSOCIATES INC								
8305049	16789	3706300000	108		ALEX BENNETT #2 - IND-2258	U PENNA - UPPER DEVON	5.4	PEOPLES NATURAL GAS
8305048	16788	3706300000	108		J J WEYANDT (DICKIE) #3 - IND 23115	U PENNA - UPPER DEVON	10.7	PEOPLES NATURAL GAS
8305045	16785	3706300000	108		NOLA E & H MCINTIRE #1 - IND 22806	U PENNA - UPPER DEVON	18.4	PEOPLES NATURAL GAS
8305046	16786	3706300000	108		NOLA E & H MCINTIRE #2 - IND 22807	U PENNA - UPPER DEVON	18.4	PEOPLES NATURAL GAS
8305047	16787	3706300000	108		NOLA E & H MCINTIRE #3 - IND 23037	U PENNA - UPPER DEVON	5.9	PEOPLES NATURAL GAS
8305050	16790	3706300000	108		S L MANNER & L STEPH #1 - IND 23181	U PENNA - UPPER DEVON	12.9	INDUSTRIAL ENERGY

RECEIVED: 10/21/82 JA: PA								

-ASHTOLA PRODUCTION CO								
8305051	16791	3705120279	103		WALTER O & HELEN LOUISE MANSON	HIGHHOUSE	0.0	

RECEIVED: 10/21/82 JA: PA								

-ATLAS RESOURCES INC								
8305053	16742	3706327053	103		FOEHRENBACH #1	CHERRYHILL	0.0	COLUMBIA GAS TRAN
8305055	16745	3703921600	107-TF		JEFFREY BENLISA #1	SPRING	0.0	COLUMBIA GAS TRAN
8305052	16744	3706326647	102-4		MC GEE #2	CHERRYHILL	0.0	COLUMBIA GAS TRAN
8305054	16745	3703921584	107-TF		MEHALSO TIPTON UNIT #1	SPRING	0.0	COLUMBIA GAS TRAN

RECEIVED: 10/21/82 JA: PA								

-CARBOT OIL & GAS CORP								
8305056	16721	3703921532	102-2		ALBERT L DEETER #1	WAYNE	50.0	TENNESSEE GAS PIP
8305061	16720	3703921532	107-TF		BOY SCOUTS OF AMERICA #1	WAYNE	50.0	TENNESSEE GAS PIP
8305058	16799	3708520405	102-2		BOY SCOUTS OF AMERICA #2	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8305063	16798	3708520405	107-TF		BOY SCOUTS OF AMERICA #2	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8305059	16801	3703921673	102-2		CLYDE MORELL #1	EAST HEAD	50.0	TENNESSEE GAS PIP
8305064	16800	3703921673	107-TF		CLYDE MORELL #1	EAST HEAD	50.0	TENNESSEE GAS PIP
8305057	16723	3703921671	102-2		JOHN M HELTZEL #2	WAYNE	50.0	TENNESSEE GAS PIP
8305062	16722	3703921671	107-TF		JOHN M HELTZEL #2	WAYNE	50.0	TENNESSEE GAS PIP
8305060	16803	3703921674	102-2		LEROY SWOGGER #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8305065	16702	3703921674	107-TF		LEROY SWOGGER #1	FAIRFIELD	50.0	TENNESSEE GAS PIP

RECEIVED: 10/21/82 JA: PA								

-CARDINAL OIL CO								
8305307	16753	3703921512	107-TF		J MORELAND #5 81-77 PA	CONNEAUT	0.0	COLUMBIA GAS TRAN
8305306	16752	3703921430	107-TF		M REMEK #1 81-63 PA PER CRA-21430	CONNEAUT	0.0	COLUMBIA GAS TRAN

RECEIVED: 10/21/82 JA: PA								

-CARL R JOHNS								
8305316	16766	3705100000	108		FOSTER #1		7.1	COLUMBIA GAS TRAN
8305315	16765	3705100000	108		KOBILACK #1		2.1	COLUMBIA GAS TRAN

RECEIVED: 10/21/82 JA: PA								

-COLUMBIA GAS TRANSMISSION CORP								
8305176	16608	3700500000	108		A DESANTIS 690730	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305087	16508	3705900000	108		ADOLF & BARBARA DEYNZER 603628	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305218	16649	3706500000	108		ADREWS REAL ESTATE 603890	PA N W SHALLOW	0.8	COLUMBIA GAS TRAN
8305261	16693	3705900000	108		ALICE R STROSNIDER 603817	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305264	16696	3705900000	108		ALICE R STROSNIDER 603854	PA S W SHALLOW	0.6	COLUMBIA GAS TRAN
8305149	16582	3706500000	108		AMELIA ESTEP 680543	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305269	16701	3706500000	108		ANDREWS REAL ESTATE 603851	PA N W SHALLOW	10.0	COLUMBIA GAS TRAN
8305217	16648	3706500000	108		ANDREWS REAL ESTATE 603900	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305097	16518	3705900000	108		ARTHUR & MARTHA PATTSN 602781	PENNSYLVANIA S W SHAL	4.0	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305273	16705	3705900000	108		ARTHUR & MARTHA PATTSN 603132	PENNSYLVANIA SW SHALL	0.1	COLUMBIA GAS TRAN
8305249	16681	3712500000	108		BALDWIN ELECTRIC CO 601466	PENNSYLVANIA SW SHALL	1.0	COLUMBIA GAS TRAN
8305245	16677	3712500000	108		BELLSVLE AN LEGION 602581	PENNSYLVANIA SW SHALL	2.0	COLUMBIA GAS TRAN
8305263	16695	3705900000	108		BELLE H KEENER 603843	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305113	16534	3704700000	108		BETHEL DEV CORP ETAL 680193	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305125	16558	3704700000	108		BETHEL DEV CORP ETAL 680218	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305283	16715	3704700000	108		BETHEL DEV CORP 680176	PA N W SHALLOW	0.8	COLUMBIA GAS TRAN
8305282	16714	3704700000	108		BETHEL DEV CORP 680177	PA N W SHALLOW	0.3	COLUMBIA GAS TRAN
8305115	16536	3704700000	108		BETHEL DEV CORP 680178	PA N W SHALLOW	0.7	COLUMBIA GAS TRAN
8305114	16535	3704700000	108		BETHEL DEV CORP 680192	PA N W SHALLOW	0.8	COLUMBIA GAS TRAN
8305112	16533	3704700000	108		BETHEL DEV CORP 680211	PA N W SHALLOW	0.8	COLUMBIA GAS TRAN
8305189	16621	3704700000	108		BETHEL DEV CORP 680214	PA N W SHALLOW	0.9	COLUMBIA GAS TRAN
8305212	16644	3706500000	108		BILL & GLADYS WOODRUFF 680411	PA N W SHALLOW	5.0	COLUMBIA GAS TRAN
8305188	16620	3706500000	108		BILL & GLADYS WOODRUFF 680542	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305221	16689	3705900000	108		BLATNE WELLS 603888	PA N W SHALLOW	3.0	COLUMBIA GAS TRAN
8305221	16682	3705900000	108		C EUGENE JACOBS 610004	PA S W SHALLOW	2.0	COLUMBIA GAS TRAN
8305156	16589	3712900000	108		C HARKNESS HEIRS 670380	PA S W SHALLOW	25.0	COLUMBIA GAS TRAN
8305148	16581	3712500000	108		CHARLEROI CHBER COMM 670902	PA S W SHALLOW	0.7	COLUMBIA GAS TRAN
8305109	16530	3703100000	108		CHARLES C GEORGE 690814	PENNSYLVANIA SW SHALL	0.7	COLUMBIA GAS TRAN
8305286	16719	3705900000	108		CHARLES L ESTEL 602364	PA N W SHALLOW	0.4	COLUMBIA GAS TRAN
8305146	16579	3703100000	108		CHARLES WHITE 690654	ROCKTON	1.0	COLUMBIA GAS TRAN
8305121	16554	3703300000	108		COMMONWEALTH OF PA 604484	ROCKTON	4.0	COLUMBIA GAS TRAN
8305172	16604	3703300000	108		COMMONWEALTH OF PA 604498	ROCKTON	3.0	COLUMBIA GAS TRAN
8305173	16605	3703300000	108		COMMONWEALTH OF PA 604499	ROCKTON	6.0	COLUMBIA GAS TRAN
8305108	16529	3703300000	108		COMMONWEALTH OF PA 604500	ROCKTON	1.0	COLUMBIA GAS TRAN
8305106	16527	3703300000	108		COMMONWEALTH OF PA 604515	ROCKTON	1.0	COLUMBIA GAS TRAN
8305105	16526	3703300000	108		COMMONWEALTH OF PA 604516	ROCKTON	1.0	COLUMBIA GAS TRAN
8305103	16524	3703300000	108		COMMONWEALTH OF PA 604549	OHIOPLYE	8.0	COLUMBIA GAS TRAN
8305101	16522	3711100000	108		COMMONWEALTH OF PA 604562	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305198	16630	3706500000	108		COMMONWEALTH OF PA 604482	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305235	16657	3706500000	108		COMMONWEALTH OF PA 680550	PA N W SHALLOW	8.0	COLUMBIA GAS TRAN
8305199	16631	3706500000	108		COMMONWEALTH OF PA 680555	PA N W SHALLOW	0.5	COLUMBIA GAS TRAN
8305234	16656	3706500000	108		COMMONWEALTH OF PA 680557	PA N W SHALLOW	0.5	COLUMBIA GAS TRAN
8305233	16655	3706500000	108		COMMONWEALTH OF PA 680564	PA N W SHALLOW	3.0	COLUMBIA GAS TRAN
8305122	16555	3706500000	108		COMMONWEALTH OF PA 680568	PA S W SHALLOW	2.0	COLUMBIA GAS TRAN
8305090	16511	3705100000	108		CONRAIL 670208	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305091	16512	3705100000	108		CONRAIL 670266	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305095	16516	3705100000	108		CONRAIL 670955	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305123	16536	3703100000	108		D G DELP 690307	PENNSYLVANIA SW SHALL	0.4	COLUMBIA GAS TRAN
8305285	16718	3705900000	108		DAVID & BETTY WALKER 602782	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305183	16615	3703100000	108		DAVID G DELP 690685	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305161	16594	3703100000	108		DEAN STEELE 690822	PENNSYLVANIA SW SHALL	0.1	COLUMBIA GAS TRAN
8305252	16684	3705900000	108		DON & EMMA CUNNINGHAM 601750	PA S W SHALLOW	0.8	COLUMBIA GAS TRAN
8305157	16590	3712900000	108		DUFF HEIRS 670313	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305197	16629	3706500000	108		E DALE WOODRUFF 680420	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305213	16645	3706500000	108		E DALE WOODRUFF 680541	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305177	16603	3700500000	108		E J BROWN 690728	PA S W SHALLOW	7.0	COLUMBIA GAS TRAN
8305160	16593	3700500000	108		E R MOORHEAD 690832	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305169	16601	3705100000	108		EARL & CARL AREFORD 670008	PA S W SHALLOW	0.2	COLUMBIA GAS TRAN
8305084	16505	3705900000	108		EDW A RINKHOFF 803546	PA S W SHALLOW	0.1	COLUMBIA GAS TRAN
8305254	16656	3705100000	108		ELIZABETH MORRIS 603912	PA N W SHALLOW	0.4	COLUMBIA GAS TRAN
8305111	16532	3703100000	108		ELLEN HESSIN 690795	PA N W SHALLOW	0.4	COLUMBIA GAS TRAN
8305159	16592	3703100000	108		ELLEN J HESSIN 690794	PA N W SHALLOW	0.4	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305256	16588	3705900000	108		ELMER JEFFRIES 603892	PA NW SHALLOW	0.4	COLUMBIA GAS
8305229	16560	3705900000	108		ELSIE M MCQUAY 602444	PENNSYLVANIA SW SHAL	0.8	COLUMBIA GAS
8305128	16561	3703100000	108		ETHEL MILLER 690566	PA N W SHALLOW	1.0	COLUMBIA GAS
8305274	16706	3705100000	108		EUGENE BOBNAR 670761	PA S W SHALLOW	1.0	COLUMBIA GAS
8305280	16712	3712500000	108		EUGENE BOBNAR 670878	PA S W SHALLOW	1.0	COLUMBIA GAS
8305279	16711	3712500000	108		EUGENE BOBNAR 670901	PA S W SHALLOW	2.0	COLUMBIA GAS
8305270	16702	3700500000	108		EUGENE SHAFER 603746	PA NW SHALLOW	2.0	COLUMBIA GAS
8305153	16586	3705900000	108		EVA E HEWITT 670923	PA S W SHALLOW	1.0	COLUMBIA GAS
8305242	16574	3712500000	108		FLORENCE H GREENLEE 602148	PENNSYLVANIA S W SHAL	0.2	COLUMBIA GAS
8305206	16538	3706500000	108		FRANK HOSTETTER 680523	PA NW SHALLOW	1.0	COLUMBIA GAS
8305135	16568	3705100000	108		FRAZEE LUMBER CO 603877	SUMMIT	9.0	COLUMBIA GAS
8305134	16567	3705100000	108		FRAZEE LUMBER CO 603903	SUMMIT	14.0	COLUMBIA GAS
8305230	16562	3705100000	108		FRAZEE LUMBER CO 670927	SUMMIT	8.0	COLUMBIA GAS
8305231	16563	3705100000	108		FRAZEE LUMBER CO 670960	SUMMIT	10.0	COLUMBIA GAS
8305232	16564	3705100000	108		FRAZEE LUMBER CO 670971	SUMMIT	1.0	COLUMBIA GAS
8305142	16575	3703100000	108		FREDA STEPHENS 690290	PA N W SHALLOW	0.5	COLUMBIA GAS
8305143	16576	3703100000	108		FREDA STEPHENS 690688	PA N W SHALLOW	0.4	COLUMBIA GAS
8305182	16514	3703100000	108		FREDA STEPHENS 690698	PA N W SHALLOW	0.3	COLUMBIA GAS
8305181	16513	3703100000	108		FREDA STEPHENS 690704	PA N W SHALLOW	0.3	COLUMBIA GAS
8305180	16512	3703100000	108		FREDA STEPHENS 690705	PA N W SHALLOW	0.3	COLUMBIA GAS
8305179	16511	3703100000	108		FREDA STEPHENS 690707	PA N W SHALLOW	0.6	COLUMBIA GAS
8305178	16510	3703100000	108		FREDA STEPHENS 690711	PA N W SHALLOW	0.4	COLUMBIA GAS
8305209	16541	3706500000	108		GEO SHAFER 680143	PA NW SHALLOW	0.7	COLUMBIA GAS
8305158	16591	3703100000	108		GEORGE DIBE 690298	PA N W SHALLOW	0.4	COLUMBIA GAS
8305219	16650	3705900000	108		GRACE P ADAMSON 603821	PA SW SHALLOW	1.0	COLUMBIA GAS
8305193	16525	3705900000	108		HARRY BAILEY APT 603663	PA SW SHALLOW	6.0	COLUMBIA GAS
8305277	16709	3712500000	108		HARVEY & JESSIE KINDER 670023	PA S W SHALLOW	1.0	COLUMBIA GAS
8305276	16708	3712500000	108		HARVEY & JESSIE KINDER 670620	PA S W SHALLOW	3.0	COLUMBIA GAS
8305147	16580	3703100000	108		HEFFNER BROTHERS 690597	PA N W SHALLOW	0.4	COLUMBIA GAS
8305228	16559	3705900000	108		HONORA B INGRAM 602522	PENNSYLVANIA S W SHAL	1.0	COLUMBIA GAS
8305222	16553	3703100000	108		HOWARD L LAMPIER 604551	PA NW SHALLOW	1.0	COLUMBIA GAS
8305150	16583	3706500000	108		HOWARD L LAMPIER 604551	PA N W SHALLOW	2.0	COLUMBIA GAS
8305124	16557	3704700000	108		IVEN & EARL WINGARD 680270	PA N W SHALLOW	0.2	COLUMBIA GAS
8305126	16559	3704700000	108		J J CRAWFORD 680189	PA N W SHALLOW	4.0	COLUMBIA GAS
8305127	16560	3704700000	108		J J CRAWFORD 680191	PA N W SHALLOW	0.8	COLUMBIA GAS
8305187	16519	3747000000	108		J J CRAWFORD 680195	PA N W SHALLOW	2.0	COLUMBIA GAS
8305116	16537	3704700000	108		J J CRAWFORD 680209	PA NW SHALLOW	2.0	COLUMBIA GAS
8305200	16532	3704700000	108		J J CRAWFORD 680210	PA NW SHALLOW	0.7	COLUMBIA GAS
8305246	16678	3705900000	108		J K WILLISON 602567	PENNSYLVANIA SW SHAL	3.0	COLUMBIA GAS
8305145	16578	3703100000	108		J M GOHEEN 690657	PA N W SHALLOW	0.5	COLUMBIA GAS
8305175	16507	3704700000	108		J RUSSELL THOMPSON 680030	PA N W SHALLOW	0.6	COLUMBIA GAS
8305170	16502	3704700000	108		J RUSSELL THOMPSON 680035	PA N W SHALLOW	2.0	COLUMBIA GAS
8305165	16598	3704700000	108		J RUSSELL THOMPSON 680043	PA N W SHALLOW	0.9	COLUMBIA GAS
8305185	16517	3704700000	108		J RUSSELL THOMPSON 680110	PA NW SHALLOW	3.0	COLUMBIA GAS
8305132	16565	3704700000	108		J RUSSELL THOMPSON 680112	PA N W SHALLOW	1.0	COLUMBIA GAS
8305110	16531	3703100000	108		J W FENSTERMAKER 690796	PA N W SHALLOW	0.4	COLUMBIA GAS
8305094	16515	3700500000	108		J WILBER BOWERSOY 603757	PA NW SHALLOW	1.0	COLUMBIA GAS
8305250	16582	3712500000	108		JACOB M BAINER 601570	PENNSYLVANIA SW SHAL	1.0	COLUMBIA GAS
8305093	16514	3700500000	108		JACOB MILLER 603733	PA NW SHALLOW	1.0	COLUMBIA GAS
8305284	16717	3705900000	108		JAMES & JUANITA CONNER 602657	PENNSYLVANIA S W SHAL	0.9	COLUMBIA GAS
8305194	16526	3705900000	108		JAMES BURNIE HARRIS 602566	PA SW SHALLOW	2.0	COLUMBIA GAS
8305163	16596	3700500000	108		JAY MINICH 690734	PA N W SHALLOW	2.0	COLUMBIA GAS
8305164	16597	3700500000	108		JAY MINICH 690736	PA N W SHALLOW	3.0	COLUMBIA GAS

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305079	16500	3705900000	108		JESSIE M COLE 802571	PENN S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305081	16500	3705900000	108		JESSIE M COLE 803294	PENN S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305155	16588	3712900000	108		JOHN C HAYMAKER 670438	PA S W SHALLOW	4.0	COLUMBIA GAS TRAN
8305166	16599	3703300000	108		JOHN FOX 604473	LUTHERSBURG	0.0	COLUMBIA GAS TRAN
8305098	16519	3705900000	108		JOHN R LOVINGOOD 603828	PA S W SHALLOW	0.9	COLUMBIA GAS TRAN
8305129	16562	3703100600	108		JOHN WEIGAND 690414	PA S W SHALLOW	3.0	COLUMBIA GAS TRAN
8305275	16707	3712500000	108		JOHN YANKOSKY 670653	PA S W SHALLOW	4.0	COLUMBIA GAS TRAN
8305096	16517	3703000000	108		JOHNSON WILSON 600398	PENNSYLVANIA S W SHAL	3.0	COLUMBIA GAS TRAN
8305225	16656	3712500000	108		JOSEPH L CARLAZZOLI 604098	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305171	16603	3703300000	108		JOSEPH LAROCK ETAL 604472	ROCKTON	6.0	COLUMBIA GAS TRAN
8305244	16676	3705900000	108		L CRAWFORD ZIMMERMAN 602133	PENNSYLVANIA SW SHAL	0.3	COLUMBIA GAS TRAN
8305162	16595	3705000000	108		M E PENCE 690768	PA S W SHALLOW	0.8	COLUMBIA GAS TRAN
8305195	16627	3705900000	108		MARGARET T COLE 803609	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305262	16694	3705900000	108		MARIE TUSTIN 603838	PA S W SHALLOW	0.8	COLUMBIA GAS TRAN
8305083	16504	3705900000	108		MARY & JAMES WOOD 603375	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305215	16661	3705900000	108		MARY E FLETCHER #7	PA S W SHALLOW	0.6	COLUMBIA GAS TRAN
8305174	16606	3705100000	108		MILDRED LUNNEN 670947	RICHHILL	0.0	COLUMBIA GAS TRAN
8305259	16691	3705900000	108		MORRIS G WOOD 603708	PA S W SHALLOW	6.0	COLUMBIA GAS TRAN
8305267	16699	3705900000	108		MORRIS G WOOD 603898	PA S W SHALLOW	0.9	COLUMBIA GAS TRAN
8305243	16675	3705900000	108		MURRAY & LAUR WILLIAMS 602134	PENNSYLVANIA SW SHAL	1.0	COLUMBIA GAS TRAN
8305247	16679	3705900000	108		MYRTLE CALDWELL 602565	PENNSYLVANIA SW SHAL	1.0	COLUMBIA GAS TRAN
8305151	16584	3705100000	108		NATIONAL MINES CORP 670239	PA S W SHALLOW	4.0	COLUMBIA GAS TRAN
8305130	16563	3705100000	108		NATIONAL MINES CORP 670951	PA S W SHALLOW	8.0	COLUMBIA GAS TRAN
8305192	16624	3705900000	108		NELLA BAILEY 603680	PA S W SHALLOW	0.3	COLUMBIA GAS TRAN
8305092	16513	3705000000	108		OTIS W PROCTIOUS 603728	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305258	16690	3705900000	108		PA GAME COH 603664	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305118	16551	3706300000	108		PA N W SHALLOW 604453	PA N W SHALLOW	5.0	COLUMBIA GAS TRAN
8305152	16585	3705100000	108		PAUL DUNAY 670916	PA N W SHALLOW	0.6	COLUMBIA GAS TRAN
8305278	16710	3706500000	108		PAUL PARKS 603887	PA NE SHALLOW	0.6	COLUMBIA GAS TRAN
8305133	16566	3707300000	108		PAUL W BLAIR 600077	PA WEST SHALLOW	7.0	COLUMBIA GAS TRAN
8305117	16550	3706500000	108		PENN STATE GAME COH 602923	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305268	16700	3706500000	108		PENN STATE GAME COH 603862	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305138	16571	3706500000	108		PENN STATE GAME COH 603955	PA N W SHALLOW	1.0	COLUMBIA GAS TRAN
8305216	16647	3706500000	108		PENN STATE GAME COH 680438	PA NW SHALLOW	0.6	COLUMBIA GAS TRAN
8305214	16646	3706500000	108		PENN STATE GAME COH 680447	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305227	16658	3706500000	108		PENN STATE GAME COH 680451	PA N W SHALLOW	0.7	COLUMBIA GAS TRAN
8305248	16680	3712500000	108		PETER & JEANE FERGUSON 602164	PENNSYLVANIA SW SHAL	1.0	COLUMBIA GAS TRAN
8305194	16525	3705100000	108		PITTS NATL BANK 604520	OHIOPTLE	12.0	COLUMBIA GAS TRAN
8305182	16523	3705100000	108		PITTS NATL BANK 604557	OHIOPTLE	5.0	COLUMBIA GAS TRAN
8305180	16521	3705100000	108		PITTS NATL BANK 604586	OHIOPTLE	4.0	COLUMBIA GAS TRAN
8305140	16573	3703100000	108		R S MURPHY 690815	PA N W SHALLOW	3.0	COLUMBIA GAS TRAN
8305272	16704	3712500000	108		RALPH MORRIS 603081	PENNSYLVANIA SW SHAL	1.0	COLUMBIA GAS TRAN
8305208	16640	3706500000	108		REUBEN BUGHMAN 680144	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305210	16642	3706500000	108		REUBEN BUGHMAN 680145	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305203	16635	3706500000	108		REUBEN BUGHMAN 680147	PA NW SHALLOW	2.0	COLUMBIA GAS TRAN
8305204	16636	3706500000	108		REUBEN BUGHMAN 680148	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305220	16651	3706500000	108		REUBEN BUGHMAN 680149	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305240	16672	3706500000	108		REUBEN BUGHMAN 680152	PA N W SHALLOW	0.8	COLUMBIA GAS TRAN
8305241	16673	3706500000	108		REUBEN BUGHMAN 680153	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305237	16669	3706500000	108		REUBEN BUGHMAN 680159	PA N W SHALLOW	0.5	COLUMBIA GAS TRAN
8305281	16713	3706500000	108		REUBEN BUGHMAN 680170	PA N W SHALLOW	0.5	COLUMBIA GAS TRAN
8305238	16670	3706500000	108		REUBEN BUGHMAN 680174	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305139	16572	3706500000	108		REUBEN BUGHMAN 680224	PA N W SHALLOW	0.1	COLUMBIA GAS TRAN

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8305207	16639	3706500000	108		REUBEN BUGHMAN 680278	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305184	16616	3706500000	108		REUBEN BUGHMAN 680522	PA N W SHALLOW	0.4	COLUMBIA GAS TRAN
8305211	16643	3706500000	108		REUBEN BUGHMAN 680536	PA NW SHALLOW	2.0	COLUMBIA GAS TRAN
8305239	16671	3706500000	108		REUBEN BUGHMAN 680553	PA N W SHALLOW	8.0	COLUMBIA GAS TRAN
8305271	16703	3706500000	108		RINGOLD MINES INC 603857	PA NW SHALLOW	3.0	COLUMBIA GAS TRAN
8305266	16698	3706500000	108		ROBERT B CHILDS 603897	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305085	16506	3706500000	108		ROBERT L LEMMON 803601	PA S W SHALLOW	0.5	COLUMBIA GAS TRAN
8305136	16569	3706300000	108		ROCH & PITTS COAL CO 604336	JACKSONVILLE CONSOL 6	2.0	COLUMBIA GAS TRAN
8305119	16552	3706300000	108		ROCH & PITTS COAL CO 604469	PA N W SHALLOW	5.0	COLUMBIA GAS TRAN
8305137	16570	3706300000	108		ROCH & PITTS COAL CO 604794	CHERRYHILL 604794	6.0	COLUMBIA GAS TRAN
8305236	16668	3706500000	108		REUBEN BUGHMAN 680156	PA NW SHALLOW	2.0	COLUMBIA GAS TRAN
8305205	16637	3706500000	108		RUEBEN BUGHMAN 680528	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305191	16623	3706500000	108		RUTH J TAGUE 603715	PA S W SHALLOW	3.0	COLUMBIA GAS TRAN
8305080	16501	3706500000	108		RUTH J TAGUE ETAL 603630	PA S W SHALLOW	0.6	COLUMBIA GAS TRAN
8305082	16503	3706500000	108		SAMUEL S BAYARD 603374	PA S W SHALLOW	0.3	COLUMBIA GAS TRAN
8305099	16520	3706500000	108		SUE L MCWAY 603754	PA NW SHALLOW	0.9	COLUMBIA GAS TRAN
8305141	16574	3706500000	108		T W COPELHAVER 60274	PA N W SHALLOW	2.0	COLUMBIA GAS TRAN
8305251	16683	3706500000	108		THOMAS & HELEN DOLAN 670977	PA S W SHALLOW	6.0	COLUMBIA GAS TRAN
8305186	16618	3706500000	108		THROCKMORTN & FUNK 601746	PENNSYLVANIA SW SMALL	0.9	COLUMBIA GAS TRAN
8305202	16634	3706500000	108		TP RUANE FARMS 670945	PA S W SHALLOW	0.7	COLUMBIA GAS TRAN
8305253	16685	3706500000	108		VELMA TEOROW 602441	PENNSYLVANIA SW SMALL	2.0	COLUMBIA GAS TRAN
8305260	16692	3706500000	108		VINCENT MOZINA 610019	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305265	16697	3706500000	108		VIRGINIA S CORSLY 603718	PA S W SHALLOW	2.0	COLUMBIA GAS TRAN
8305201	16633	3706500000	108		VIRGINIA S CORSLY 603883	PA NW SHALLOW	0.9	COLUMBIA GAS TRAN
8305107	16528	3706500000	108		W B HOLBEN 690738	PA NW SHALLOW	0.5	COLUMBIA GAS TRAN
8305167	16600	3706500000	108		W C LEASURE 604504	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305154	16587	3706500000	108		WALTER L DEARTH 670133	PA S W SHALLOW	3.0	COLUMBIA GAS TRAN
8305196	16628	3706500000	108		WILLIAM & ANN PHILLIPS 670582	PA S W SHALLOW	1.0	COLUMBIA GAS TRAN
8305144	16577	3706500000	108		WILLIAM MCCAY 603695	PA S W SHALLOW	0.5	COLUMBIA GAS TRAN
8305086	16507	3706500000	108		WILLIAM WHITE 690676	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305120	16553	3712500000	108		WM R & E JOHNSON 803614	PA S W SHALLOW	7.0	COLUMBIA GAS TRAN
8305190	16622	3706500000	108		WORTHINGTON 670216	PA NW SHALLOW	1.0	COLUMBIA GAS TRAN
8305088	16509	3706500000	108		1ST NATL BK W TUSTIN 603769	PA NW SHALLOW	4.0	COLUMBIA GAS TRAN
8305089	16510	3706500000	108		1ST NATL BK W TUSTIN 603775	PA NW SHALLOW	3.0	COLUMBIA GAS TRAN
8305255	16687	3706500000	108		1ST NATL BK W TUSTIN 603776	PA NW SHALLOW	2.0	COLUMBIA GAS TRAN
8305226	16657	3706500000	108		1ST NATL BK W TUSTIN 603899	PA NW SHALLOW	0.9	COLUMBIA GAS TRAN
8305224	16655	3706500000	108		1ST NATL BK W TUSTIN 603916	PA NW SHALLOW	0.3	COLUMBIA GAS TRAN
8305223	16654	3706500000	108		1ST NATL BK W TUSTIN 604505	PA NW SHALLOW	2.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 10/21/82	JA: PA			
8305317	16769	3706326868	103		E D GOSS WN-1885	MONTGOMERY TOWNSHIP	78.0	GENERAL SYSTEM PU
8305077	16227	3706326869	102-4		E HILEMAN WN-1886	MONTGOMERY TOWNSHIP	12.0	GENERAL SYSTEM PU
8305318	16770	3706326883	103		GRACE LYNCH WN-1837	MONTGOMERY TOWNSHIP	4.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED: 10/21/82	JA: PA			
8305301	16747	3706326978	103		DAVID FLYNN #1 KA-132	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRAN
8305302	16748	3706326793	103		GLENN MACK #2 KN-20	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRAN
-FAIRMAN DRILLING CO				RECEIVED: 10/21/82	JA: PA			
8305334	16795	3706300000	108		JOHN ZACZYK WEIRS #2 F-2893	PLUNVILLE	10.0	PEOPLES NATURAL G
8305304	16750	3706300000	103		LINDSEY COAL MINING CO #10 F-3194	GRACETON	25.0	COLUMBIA GAS TRAN
8305305	16751	3706300000	103		LINDSEY COAL MINING CO #12 F-3193	GRACETON	30.0	COLUMBIA GAS TRAN
8305303	16749	3706300000	103		LINDSEY COAL MINING CO #6 F-3158	GRACETON	18.0	COLUMBIA GAS TRAN
-J & J ENTERPRISES INC				RECEIVED: 10/21/82	JA: PA			
8305331	16792	3706327019	103		GEORGE A RICKARD #1 (150A)	GREEN	0.0	CONSOLIDATED GAS

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8305332	16793	3706522559	103		R & P COAL CO #32	WINSLOW	0.0	COLUMBIA GAS TRAN
8305333	16794	3706522576	103		R & P COAL CO #39 (143A)	WINSLOW	0.0	COLUMBIA GAS TRAN
-KAPPA S T JOINT VENTURE 81			RECEIVED:	10/21/82	JA: PA			
8305076	16131	3703321288	103		D KRINER #1	BRADY	25.0	NATIONAL FUEL GAS
8305078	16232	3703321274	103		DANVIR 1-A	FERGUSON	25.0	COLUMBIA GAS TRAN
8305075	16130	3703321355	103		MC CARTNEY #1	PENN	25.0	CONSOLIDATED GAS
-KEYSTONE ENERGY OIL & GAS PRODUCTION			RECEIVED:	10/21/82	JA: PA			
8305330	16784	3706326768	103		KUNKLE #4	THOMAS KUNKLE	85.8	T W PHILLIPS GAS
8305328	16782	3706522475	103		KUNSELMAN #2	MELDA KUNSELMAN	30.1	T W PHILLIPS GAS
8305329	16783	3706522464	103		SCHRECKENGOST #1	HARRY J SCHRECKENGOST	51.2	APOLLO GAS CO
-LAKE ERIE #1			RECEIVED:	10/21/82	JA: PA			
8305335	16810	3704921932	107-TF		A ALEKSIEWICZ #1 82-15 - ERI-21932	CONNEAUT	0.0	COLUMBIA GAS TRAN
8305309	16756	3704921933	107-TF		CLEGG #1 82-10 PA PER ERI-21933	CONNEAUT	0.0	COLUMBIA GAS TRAN
8305310	16755	3704921922	107-TF		J VANCO JR #1 82-13 PA ERI-21922	CONNEAUT	0.0	COLUMBIA GAS TRAN
8305308	16754	3704921920	107-TF		NORMA REED #1 82-12 PA ERI-21920	CONNEAUT	0.0	COLUMBIA GAS TRAN
-MAC-MAR INC			RECEIVED:	10/21/82	JA: PA			
8305322	16774	3706326216	103		ROVISON #1	BLAIRVILLE	18.0	PEOPLES NATURAL G
-PHILLIPS PRODUCTION CO			RECEIVED:	10/21/82	JA: PA			
8305067	11960	3706323930	108		GLENN L CAMPBELL #1	SOUTH MAHONING	4.0	COLUMBIA GAS TRAN
8305070	11997	3706324033	108		JOHN L WESTON #1	WASHINGTON	4.0	ELJER PLUMBINGWAR
8305319	16771	3706327007	103		JOSEPH J PELES #1	MONTGOMERY	25.0	
8305320	16772	3706326989	103		MARY J PELES #1	MONTGOMERY	25.0	
8305320	16772	3706326989	103		ROBERT BOYD SPENCE #1	WASHINGTON	15.0	COLUMBIA GAS TRAN
8305069	11984	3706325559	108		WALTER J BORK #1	BLACKLICK	25.0	
8305168	9306	3706326390	103		WILLIAM R BURKETT #1	SOUTH MAHONING	6.0	COLUMBIA GAS TRAN
8305068	11961	3706324090	108		HESS #1	LONG BRANCH BOROUGH	18.0	
-POMINEX INC			RECEIVED:	10/21/82	JA: PA			
8305071	14915	3712521429	103		HESS #2	LONG BRANCH	18.0	
8305073	14917	3712521430	103		WINNETT #1	LONG BRANCH	18.0	
8305072	14916	3712521435	103					
-R D WERNER CO INC			RECEIVED:	10/21/82	JA: PA			
8305299	16739	3708520381	103		O ANDERSON #1	SUGAR GROVE	25.0	
8305300	16740	3708520381	102-2		O ANDERSON #1	SUGAR GROVE	25.0	
-S T JOINT VENTURE - 81-B			RECEIVED:	10/21/82	JA: PA			
8305321	16773	3703321385	103		WITHEROW #1	CURWENSVILLE	25.0	COLUMBIA GAS TRAN
-T W PHILLIPS GAS & OIL CO			RECEIVED:	10/21/82	JA: PA			
8305347	16823	3706500000	108		A L HETRICK #1	BEAVER	1.8	T W PHILLIPS GAS
8305345	16821	3706500000	108		ANDREW GEIST SR #1	BEAVER	1.7	T W PHILLIPS GAS
8305340	16816	3706320678	108		BELLE W VAN HORN (DILTS) #1	SOUTH MAHONING	1.6	T W PHILLIPS GAS
8305352	16837	3706500000	108		C R SHAFFER #1	BEAVER	0.7	T W PHILLIPS GAS
8305353	16838	3706500000	108		C R SCHWAB #1	BEAVER	0.6	T W PHILLIPS GAS
8305336	16812	3706320353	108		EBERT BREWER #1	SOUTH MAHONING	1.6	T W PHILLIPS GAS
8305364	16849	3706300000	108		EFFA L SKINNER #3	WEST MAHONING	1.4	T W PHILLIPS GAS
8305339	16815	3706320352	108		ELMER STEELE #1	SOUTH MAHONING	1.0	T W PHILLIPS GAS
8305355	16840	3706500000	108		FAYE B PLYLER #2	BEAVER	0.8	T W PHILLIPS GAS
8305354	16839	3706500000	108		FRANCES REITZ #1	BEAVER	1.8	T W PHILLIPS GAS
8305066	11687	3706321620	108		GEORGE J ANGELO #1	CENTER	2.1	T W PHILLIPS GAS
8305344	16820	3706500000	108		GILBERT R DINGER #1	PLUMVILLE BORO	3.0	T W PHILLIPS GAS
8305346	16822	3706500000	108		HARRY GEIST #1	BEAVER	1.7	T W PHILLIPS GAS
8305337	16813	3706320953	108		J D MARSHALL #1	SOUTH MAHONING	3.4	T W PHILLIPS GAS
8305363	16848	3706300000	108		J E ROUSH #1	WEST MAHONING	0.9	T W PHILLIPS GAS
8305362	16847	3706320271	108		J H C WEAVER #1	WEST MAHONING	1.9	T W PHILLIPS GAS
8305361	16846	3706300000	108		JERRY NOLF #1	WEST MAHONING	1.1	T W PHILLIPS GAS
8305356	16841	3706500000	108		L B HUBER #1-106A	BEAVER	0.4	T W PHILLIPS GAS

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8305358	16843	3706500000	108			L B HUBER #1-140	BEAVER	1.2	T W PHILLIPS GAS
8305357	16842	3706500000	108			L B HUBER #2-106	BEAVER	1.6	T W PHILLIPS GAS
8305359	16844	3706500000	108			L B HUBER #2-140	BEAVER	0.6	T W PHILLIPS GAS
8305350	16826	3706500000	108			L R HETRICK #1	BEAVER	0.6	T W PHILLIPS GAS
8305343	16819	3706321872	108			MILLER - VAN MORNE #1	SOUTH MAHONING	12.1	T W PHILLIPS GAS
8305342	16818	3706320679	108			MILLER-VAN MORNE #2	SOUTH MAHONING	2.7	T W PHILLIPS GAS
8305341	16817	3706321783	108			MILTON WELLS #3	SOUTH MAHONING	4.0	T W PHILLIPS GAS
8305338	16814	3706300000	108			R S NOCHOL #2	SOUTH MAHONING	4.1	T W PHILLIPS GAS
8305348	16824	3706500000	108			THOMAS B HEPLER #2	BEAVER	1.7	T W PHILLIPS GAS
8305349	16825	3706500000	108			THOMAS B HEPLER #3	BEAVER	1.8	T W PHILLIPS GAS
8305360	16845	3706500000	108			W V HUBER #1	BEAVER	1.0	T W PHILLIPS GAS
8305351	16836	3706500000	108			WILMA N SHICK #1	BEAVER	0.7	T W PHILLIPS GAS
-TURN OIL INC									
8305298	16738	3706326821	103			RECEIVED: 10/21/82 JA: PA	CHAMBERSVILLE	36.0	PEOPLES NATURAL G
8305314	16764	3706326890	103			BYRON M & JOYCE P FRICK #1	BRUSH VALLEY	38.0	T W PHILLIPS GAS
8305324	16777	3706324985	108			CHARLES J & H GLENN OVERDORFF #1	ATWOOD	9.5	INDUSTRIAL ENERGY
8305327	16781	3700522694	103			DONALD L MCINTIRE #1	BRYAN	50.0	T W PHILLIPS GAS
8305313	16763	3700522661	103			GEORGE W JR & DESIRA A REESMAN #1	BRYAN	45.0	T W PHILLIPS GAS
8305296	16736	3700522688	103			JAMES F & CATHERINE A YOUNG #1	DAYTON	44.0	T W PHILLIPS GAS
8305326	16779	3700522418	108			KENNETH E & FAYE MCGAUGHEY #1	RURAL VALLEY	2.5	INDUSTRIAL ENERGY
8305323	16776	3706324984	108			MARTHA FRANCES & PETER CALARIE #1	BEYER	15.0	INDUSTRIAL ENERGY
8305325	16778	3706324983	103			NANCY L BARKER #1	BEYER	36.0	INDUSTRIAL ENERGY
8305297	16737	3700522691	103			RONALD L BLYSTONE #1	BRYAN	40.0	T W PHILLIPS GAS
-UNION DRILLING INC									
8305074	15036	3706326922	103			RECEIVED: 10/21/82 JA: PA	CHERRYHILL TOWNSHIP	0.0	COLUMBIA GAS TRAN
-WATROCO OIL & GAS CO									
8305311	16757	3703921667	102-2			RECEIVED: 10/21/82 JA: PA	ATHENS FIELD	31.5	COLUMBIA GAS TRAN
8305312	16758	3703921667	107-TF			HOWARD MATTESON #2 (W-162-A)	ATHENS FIELD	31.5	COLUMBIA GAS TRAN
8305288	16725	3703921594	107-TF			HOWARD MATTESON #2 (W-162-A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305289	16726	3703921594	102-2			JOSEPH CORBIN #1 (W-143A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305287	16724	3703921633	102-2			JOSEPH CORBIN #1 (W-143A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305290	16727	3703921633	107-TF			LEO MADOLNY #1 (W-150A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305291	16728	3703921652	102-2			LEO MADOLNY #1 (W-150A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305292	16729	3703921652	107-TF			PAUL E KUNZ #1 (W-138A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305293	16730	3703921666	107-TF			PAUL E KUNZ #1 (W-138A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305294	16731	3703921666	102-2			PAUL E KUNZ #2 (W-164A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
8305295	16732	3703921666	102-2			PAUL E KUNZ #2 (W-164A)	ATHENS FIELD (ROME TO	31.5	COLUMBIA GAS TRAN
-WALTER L HOUSER & RUSSELL L BARRETT RECEIVED: 10/21/82 JA: PA									
8305295	16732	3706326699	103			CLAIR R JONES #1 - INDIANA PA	CHEESE RUN	120.0	

SOURCE DATA FOR THIS NOTICE IS AVAILABLE ON MAGNETIC TAPE FROM THE NATIONAL TECHNICAL INFORMATION SERVICE (NTIS). FOR INFORMATION, CONTACT STUART WEISMAN (NTIS) AT (703) 487-4808, 5285 PORT ROYAL RD, SPRINGFIELD, VA 22161, OR SANDRA SPEAR (FERC) (202) 397-8681.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-32213 Filed 11-24-82; 8:45 am]

BILLING CODE 6717-01-C

[Volume 778]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: November 19, 1982.

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION								
-ANSYTHE EXPLORATION CO INC	82-3449	1700520156	103	RECEIVED:	10/27/82	J A: LA		
-CRYSTAL OIL AND LAND COMPANY	82-0316	1701521616	102-4	RECEIVED:	10/27/82	J A: LA	1095.0	
-GULF OIL CORPORATION	82-0064	1701520859	102-4	BANK OF BENTON #1	CV D RA SU B		175.6	ARKANSAS LOUISIAN
-EDWIN L COX	82-0066	1701521484	102-4	BOLINGER #8	#1 HAY RA SU G		38.7	ARKANSAS LOUISIAN
-FORMAN EXPLORATION COMPANY	82-3445	1710922244	103	HUNTER #1			146.0	ARKANSAS LOUISIAN
-GULF OIL CORPORATION	82-3727	1703320040	102-4	RIMSLAND ESTATE #1			20.4	ARKANSAS LOUISIAN
-KERR-MCGEE CORPORATION	82-0625	1772620147	103	RECEIVED:	10/27/82	J A: LA	18.0	COLUMBIA GAS TRAN
-LEROY W JAMES	82-0715	1727208310	102-4	RECEIVED:	10/27/82	J A: LA	1239.0	DOW INTRASTATE GA
-LUFFEY GAS CORP	82-3417	1706720848	108	RECEIVED:	10/27/82	J A: LA	700.0	UNITED GAS PIPELI
-MID LOUISIANA GAS COMPANY	82-3729	1703121924	102-2	RECEIVED:	10/27/82	J A: LA	36.0	UNITED GAS PIPE L
-MONROE GAS FIELD	82-3728	1703121923	102-2	RECEIVED:	10/27/82	J A: LA	60.0	UNITED GAS PIPE L
-MONROE GAS FIELD	82-3730	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	350.0	TEXAS EASTERN TRA
-MONROE GAS FIELD	82-3731	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	700.0	SOUTHERN NATURAL
-MONROE GAS FIELD	82-3732	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	73.0	UNITED GAS PIPE L
-MONROE GAS FIELD	82-3733	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	4.0	IMC PIPELINE CO I
-MONROE GAS FIELD	82-3734	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	4.0	IMC PIPELINE CO I
-MONROE GAS FIELD	82-3735	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	3.0	IMC PIPELINE CO I
-MONROE GAS FIELD	82-3736	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	3.0	IMC PIPELINE CO I
-MONROE GAS FIELD	82-3737	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	65.0	SOUTHERN NATURAL
-MONROE GAS FIELD	82-3738	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	45.0	SOUTHERN NATURAL
-MONROE GAS FIELD	82-3739	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	180.0	UNITED GAS PIPELI
-MONROE GAS FIELD	82-3740	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	126.0	TENNESSEE GAS PIP
-MONROE GAS FIELD	82-3741	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	73.0	TENNESSEE GAS PIP
-MONROE GAS FIELD	82-3742	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	209.0	TENNESSEE GAS PIP
-MONROE GAS FIELD	82-3743	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	1.0	MID LOUISIANA GAS
-MONROE GAS FIELD	82-3744	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	1.3	MID LOUISIANA GAS
-MONROE GAS FIELD	82-3745	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	1.6	MID LOUISIANA GAS
-MONROE GAS FIELD	82-3746	1703121864	102-2	RECEIVED:	10/27/82	J A: LA	0.5	MID LOUISIANA GAS

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JD NO	JA DKT	API NO.	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-NICKLOS OIL & GAS CO	82-3716	1705721892	102-4	RECEIVED: 10/27/82	JA: LA	ROUSSEAU	2190.0	TRANSCONTINENTAL
-RELCO EXPLORATION CO INC	82-3380	1707300000	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	6.8	IMC EXPLORATION C
8305688	82-3378	1707300140	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	16.8	IMC EXPLORATION C
8305686	82-3378	1707300235	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	1.9	IMC EXPLORATION C
8305689	82-3374	1707320007	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	5.7	IMC EXPLORATION C
8305682	82-3375	1707320952	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	3.9	IMC EXPLORATION C
8305684	82-3376	1707320958	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	18.5	IMC EXPLORATION C
8305685	82-3377	1707300000	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	3.4	IMC EXPLORATION C
8305687	82-3379	1707300000	108	RECEIVED: 10/27/82	JA: LA	MONROE GAS	2.7	IMC EXPLORATION C
-SANDAN OIL CORPORATION	82-0774	1710121246	103	RECEIVED: 10/27/82	JA: LA	SMPL CO #2 - SN 175733 OP 8 RAA SUA BAYOU SALE	720.0	MICHIGAN-WISCONSI
8305711	82-0743	1710121246	103	RECEIVED: 10/27/82	JA: LA	SMPL CO #2-D -SN 179590 OP5 RAA SUA BAYOU SALE	720.0	MICHIGAN - WISCOM
-SHELL OIL CO	82-2850	1710922357	102-4	RECEIVED: 10/27/82	JA: LA	SL 2077 #14 HAI Q RM SUA	585.0	TENNESSEE GAS PIP
8305721	81-2850	1702120750	102-0	RECEIVED: 10/27/82	JA: LA	NEWSOM #1 (172372) 2500* RA SUA	0.0	LOUISIANA INTRAST
-SPIRIT PETROLEUM	82-3446	1702702428	108	RECEIVED: 10/27/82	JA: LA	AVERTT #1 CV RA SU J	11.0	UNITED GAS PIPE L
8305705	82-3448	1702702433	108	RECEIVED: 10/27/82	JA: LA	DOBBINS A-1 CV RA SU K	14.0	UNITED GAS PIPE L
8305703	82-3447	1702702418	108	RECEIVED: 10/27/82	JA: LA	J E WHITE #1 CV RA SU D	18.0	UNITED GAS PIPE L
-SUN EXPLORATION & PRODUCTION CO	82-3382	1700700000	108	RECEIVED: 10/27/82	JA: LA	APSB #1 PLAN 1 RA SUA	4.0	UNITED GAS PIPE L
8305690	82-0618	1708320458	103	RECEIVED: 10/27/82	JA: LA	DELHI UNIT #183-3 DELHI HOLT BRYANT DELHI	31.0	TEXAS EASTERN TRA
8305675	82-0619	1708320459	103	RECEIVED: 10/27/82	JA: LA	DELHI UT #63-2 DELHI HOLT BRYANT SU DELHI	5.0	TEXAS EASTERN TRA
-TEXACO INC	82-0313	1702720980	102-4	RECEIVED: 10/27/82	JA: LA	SL 340 #165 RIS 20 RA SU	1715.0	KAISER ALUMINUM &
8305708	82-0313	1702720980	102-4	RECEIVED: 10/27/82	JA: LA	ROBINSON H #1	279.2	UNITED GAS PIPE L
-THE ANSCHUTZ CORPORATION	82-0732	1704920134	102-4	RECEIVED: 10/27/82	JA: LA	CV RA SUA DAVIS BROTHERS #1 166421	127.0	UNITED GAS PIPELI
8305707	82-0732	1704920134	102-4	RECEIVED: 10/27/82	JA: LA	TIDELANDS-STATE LEASE 977 #2	273.0	TENNESSEE GAS PIP
-TIDELANDS EXPLORATION CO INC	82-3462	1771920264	103	RECEIVED: 10/27/82	JA: LA	ESTELLA Y ASHY #1	252.0	CONOCO INC
8305701	82-3462	1771920264	103	RECEIVED: 10/27/82	JA: LA	WT & CE CARPENTER #1 (126755)	110.0	TEXAS GAS TRANSMI
-WAINOCO OIL & GAS CO	82-734	1700120807	102-4	RECEIVED: 10/27/82	JA: LA	REEDER HEIRS #1 WHELESS-PELTO SMK C EAST DYKESVILLE	274.0	UNITED GAS PIPE L
8305709	82-734	1700120807	102-4	RECEIVED: 10/27/82	JA: LA	CLARENCE #34	36.0	BATTLE CREEK GAS
-WAYNE J SPEARS	82-2993	1706721667	103	RECEIVED: 10/27/82	JA: MI	RUTZ #6-34		
8305722	82-0283	1702720220	107-TF	RECEIVED: 10/27/82	JA: MI			
-WHELESS INDUSTRIES INC	82-0283	1702720220	107-TF	RECEIVED: 10/27/82	JA: MI			
8305728	82-0283	1702720220	107-TF	RECEIVED: 10/27/82	JA: MI			
-MICHIGAN DEPARTMENT OF NATURAL RESOURCES								
-REF PETROLEUM CORP								
8305654								
-MONTANA BOARD OF OIL & GAS CONSERVATION								
8305661	12-81-262	2509121307	103	RECEIVED: 10/26/82	JA: MT			
8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-FALCON-COLORADO EXPLORATION INC								
8305661	12-81-262	2509121307	103	RECEIVED: 10/26/82	JA: MT			
8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			
-HONKER-WINNEPEGOSIS								
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8305662	12-81-263	2509121307	102-4	RECEIVED: 10/26/82	JA: MT			

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305659	1681-265	2507121772	102-2		DOYEN #1-24	SWANSON CREEK	2.1	MONTANA-DAKOTA UT
8305664	12-81-264	2507121770	103		WILSON #3-1	SWANSON CREEK	15.8	MONTANA-DAKOTA UT
-MIDLANDS GAS CORPORATION								
8305663	3-82-59	2507121690	108		SETZER 1 1833	BOWDOIN	19.0	KANSAS-NEBRASKA M
-SOUTHLAND ROYALTY CO								
8305660	12-81-259	2508321366	102-2		PREVOST #1-19	THREE BUTTES	18.0	MGPC INC

NORTH DAKOTA INDUSTRIAL COMMISSION								

-GULF OIL CORPORATION								
8305670	589	3300700788	102-2		BURIAN 1-26-38	LITTLE KNIFE	50.0	
8305671	588	3305301433	102-2		CHURCH 1-2-1A	UNDESIGNATED	240.0	
8305668	591	3302500300	102-2		HARTMAN 1-5-2A	LITTLE KNIFE	94.0	
8305669	590	3300700784	102-2		LOH 2-25-1B	LITTLE KNIFE	30.0	
8305666	593	3300700790	102-2		LOH 4-25-3A	LITTLE KNIFE	30.0	
8305667	592	3300700827	102-2		2ASTOUPIL 1-26-3B	UNDESIGNATED	36.0	
-MTS LTD PARTNERSHIP								
8305673	586	3302500246	102-2		KNUTSON WERRE 3 #1	BEAR CREEK	475.0	
8305665	584	3302500319	102-2		KNUTSON WERRE 34 #1	BEAR CREEK	1825.0	
8305674	585	3305301434	102-2		ROEN 14 #1	WILDCAT	183.0	
-SUPERIOR OIL CO								
8305672	587	3305301522	102-2		NELSON #2	INDIAN HILL	0.0	

OKLAHOMA CORPORATION COMMISSION								

-ADAMS PETROLEUM ENTERPRISES CORP								
8305367	16905	3506321249	103		DIAMOND "B" #1	GREASY CREEK	144.2	PUBLIC SERVICE CO
-AMOCO PRODUCTION CO								
8305770	21551	3503920707	107-DP		HUNNICUTT UNIT #1	WILDCAT - (SPRINGER-B	3000.0	SOUTHERN NATURAL
8305419	16939	3504921700	103		BRADSHAW A 1-26	S W ANTIOCH PROSP	35.0	WARREN PETROLEUM
-ANDOVER OIL COMPANY								
8305758	17132	3501722127	103		ROTHER #3-4	180.0	DELHI GAS PIPELIN	
-APACHE CORPORATION								
8305411	15854	3503920472	102-4		BARROW #1-36	281.0	EL PASO NATURAL G	
-ARAPAH0 PETROLEUM INCORPORATED								
8305448	16842	3509322046	103		COTTONS 1-34	30.0	PANHANDLE EASTERN	
8305438	16838	3509322096	103		COTTONS 2-34	22.0	PANHANDLE EASTERN	
8305446	16840	3504722484	103		GROVES 1-21	6.0	PHILLIPS PETROLEU	
8305390	16845	3507323164	103		K HILL 1-10	6.0	PHILLIPS PETROLEU	
8305439	16839	3507323091	103		KLINBERT 1-8	5.0	PHILLIPS PETROLEU	
8305447	16841	3507323151	103		NICE 1-9	0.0	PHILLIPS PETROLEU	
8305436	16837	3504722482	103		PAYA 1-30	5.0	PHILLIPS PETROLEU	
8305437	16844	3504722598	103		PRIM 1-27	9.0	PHILLIPS PETROLEU	
8305391	16846	3507323014	103		V BEASLEY	4.0	PHILLIPS PETROLEU	
8305449	16843	3507323005	103		WERNER 1-8	12.0	PHILLIPS PETROLEU	
-B & J DEVELOPERS INC								
8305375	16817	3514722405	103		NICHOLSON #2	127.8	BARON PIPELINE IN	
-BAILEY PETROLEUM CORP								
8305578	16968	3511123502	103		ADAMS #1-10	11.0	PHILLIPS PETROLEU	
-BARNES OIL CO								
8305404	17643	3503700000	108		SWINGLE #1	395.8	ARCO OIL & GAS CO	
-BENTLEY & LAING								
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8305370	16956	3510321601	103	RECEIVED: 10/25/82	MADDEN #1		146.0	AMINOIL USA INC
-BENTLEY & LAING			103	RECEIVED: 10/27/82	CAROLYN KERFORD #1		14.0	AMINOIL USA INC
8305579	16957	3510321600	103	RECEIVED: 10/27/82	COULTER #3		29.2	SUN GAS CO
-BONRAY ENERGY CORP			103	RECEIVED: 10/22/82	METZLER 1-21		500.0	DELHI GAS PIPELIN
-BRACKEN EXPLORATION CO			103	RECEIVED: 10/22/82	NORMAN #1-10		0.0	
8305384	17059	3501221683	103	RECEIVED: 10/25/82	COOPER #2-13		0.0	INTER NORTH INC
-BROCK HYDROCARBONS INC			103	RECEIVED: 10/22/82	BURCHE #1-12		400.0	LOME STAR GAS CO
8305428	16823	3504520997	103	RECEIVED: 10/22/82	HISSOM #1-38		0.0	LOME STAR GAS CO
-BROCK HYDROCARBONS INC			103	RECEIVED: 10/27/82	THOMAS #1-24		50.0	SUN GAS CO
8305551	17265	3515321177	103	RECEIVED: 10/27/82	ECKROAT #18-1		828.0	DELHI GAS PIPELIN
-BUNKER EXPLORATION CO			103	RECEIVED: 10/25/82	MCKAUGHAN #1		11.0	H J D CATTLE CO
8305406	20649	3501922519	103	RECEIVED: 10/27/82	RIPLEY #1-2		11.0	H J D CATTLE CO I
-BUNKER EXPLORATION CO			103	RECEIVED: 10/27/82	STEVENSON #1		109.5	H J D CATTLE CO
8305774	19813	3501922474	103	RECEIVED: 10/27/82	STEVENSON-WEST #1		12.8	H J D CATTLE CO
-CANADIAN EXPLORATION CORP			103	RECEIVED: 10/27/82	GORE #2		400.0	PANHANDLE EASTERN
8305784	17074	3508720586	103	RECEIVED: 10/25/82	BERNICE MILLS #1		20.0	CITIES SERVICE GA
-CANADIAN EXPLORATION CORP			103	RECEIVED: 10/22/82	SEABOCH 1-24		4.0	CITIES SERVICE GA
8305780	17219	3501722228	103	RECEIVED: 10/25/82	CHESNUT A#1		377.9	CITIES SERVICE GA
-CARNES PETROLEUM CO			103	RECEIVED: 10/25/82	EWELL 2-23		49.0	PHILLIPS PETROLEU
8305588	17179	3511721298	103	RECEIVED: 10/25/82	BEARD #1		0.0	PHILLIPS PETROLEU
8305550	17185	3511721218	103	RECEIVED: 10/22/82	BEARD #2		24.0	TRANSOK PIPELINE
8305585	17184	3511721249	103	RECEIVED: 10/22/82	B JONES #2		0.0	UNION TEXAS PETRO
8305586	17183	3511721239	103	RECEIVED: 10/22/82	C E KERR #2		0.0	UNION TEXAS PETRO
8305587	17182	3511721385	103	RECEIVED: 10/22/82	C MCNICKLE #2		0.0	UNION TEXAS PETRO
-CHAMPLIN EXPLORATION INC			103	RECEIVED: 10/22/82	E E ROBERTSON #2		0.0	UNION TEXAS PETRO
8305779	17217	3504321383	103	RECEIVED: 10/25/82	G E MILLS #2		0.0	UNION TEXAS PETRO
-CHAMPLIN PETROLEUM COMPANY			103	RECEIVED: 10/25/82	H L ELLIOTT #2		0.0	UNION TEXAS PETRO
8305589	17177	3508300000	103	RECEIVED: 10/25/82	RALPH E KECK #2		0.0	UNION TEXAS PETRO
-CHASE EXPLORATION CORP			103	RECEIVED: 10/25/82	T R LIBBY #2		0.0	UNION TEXAS PETRO
8305395	12500	3507121023	103	RECEIVED: 10/25/82	M L RYEL "A" #2		0.0	UNION TEXAS PETRO
-CITIES SERVICE COMPANY			103	RECEIVED: 10/25/82	P H HERTZLER #2		0.0	UNION TEXAS PETRO
8305562	17003	3504921712	103	RECEIVED: 10/25/82				
-CLARK OPERATING SERVICES INC			103	RECEIVED: 10/25/82				
8305440	16904	3511122300	103	RECEIVED: 10/25/82				
-CLYDE D HOLDEN			103	RECEIVED: 10/25/82				
8305594	16035	3511100000	103	RECEIVED: 10/25/82				
8305595	16034	3511100000	103	RECEIVED: 10/25/82				
-COBBS OIL & GAS CO			103	RECEIVED: 10/25/82				
8305418	16857	3506300000	103	RECEIVED: 10/25/82				
-COLA PETROLEUM INC			103	RECEIVED: 10/25/82				
8305401	16874	3500320820	103	RECEIVED: 10/25/82				
8305397	16869	3509322118	103	RECEIVED: 10/25/82				
8305399	16872	3500320821	103	RECEIVED: 10/25/82				
8305402	16875	3509322104	103	RECEIVED: 10/25/82				
8305365	16876	3509322107	103	RECEIVED: 10/25/82				
8305480	16873	3500320816	103	RECEIVED: 10/25/82				
8305396	16868	3500320822	103	RECEIVED: 10/25/82				
8305398	16871	3509322105	103	RECEIVED: 10/25/82				
8305450	16867	3509322106	103	RECEIVED: 10/25/82				
-COLA PETROLEUM INC			103	RECEIVED: 10/25/82				
8305572	16877	3500320817	103	RECEIVED: 10/25/82				
8305581	16866	3500320818	103	RECEIVED: 10/25/82				
-COLA PETROLEUM INC			103	RECEIVED: 10/25/82				

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8305796	16864	3509322117	103		A S ECK #2	NORTHWEST RINGWOOD				
8305797	16865	3509322108	103		J W JEFFRIES #2	NORTHWEST RINGWOOD				
8305776	16870	3500320819	103		P H HERTZLER "A" #2	NORTHWEST RINGWOOD				
8305795	16863	3509322113	103		T D SPURGEON #2	NORTHWEST RINGWOOD				
-COLONA PETROLEUM INC			RECEIVED:	10/27/82	JA: OK					
8305761	17199	3504722570	103		RALPH #1	SOONER TREND				
-COMMERCIAL ENERGY CORP			RECEIVED:	10/27/82	JA: OK					
8305809	17101	3504722853	103		SPENCER 1-29	SOONER TREND				
-COTTON PETROLEUM CORPORATION			RECEIVED:	10/27/82	JA: OK					
8305780	17082	3501121676	103		MOBERECHT #1	GREENFIELD NW				
8305767	21258	3505121220	107-OP		LEWIS #1	RUSH SPRINGS SW				
-CROUCH PETROLEUM COMPANY			RECEIVED:	10/27/82	JA: OK					
8305759	17189	3509220429	103		BRADFORD 2-36	SE CHECOTAH				
8305760	17190	3509120411	103		C P FUTRELL #1-30	S E CHECOTAH				
8305792	17187	3509120323	103		KINDRED #1	S E CHECOTAH				
8305791	17186	3509120389	103		KLOECKLER 1-30	S E CHECOTAH				
-CUMMINGS OIL CO			RECEIVED:	10/25/82	JA: OK					
8305570	16630	3507323418	103		CORR #1-8	SOONER TREND				
-DAVIS OIL COMPANY			RECEIVED:	10/27/82	JA: OK					
8305775	16196	3501521072	103		KATHLEEN #1	CANYON CITY				
-DOME PETROLEUM CORP			RECEIVED:	10/25/82	JA: OK					
8305582	16859	3504921335	103		FERGUSON 2-1	FOSTER S E				
-DONLARK EXPLORATION INC			RECEIVED:	10/25/82	JA: OK					
8305571	16638	3507323109	103		SHANNON #3	W DUNLAP				
-DUNIGAN OPERATING CO INC			RECEIVED:	10/25/82	JA: OK					
8305599	15264	3500920442	103		ALLEN #1	SOUTH ERICK				
-DYCO PETROLEUM CORPORATION			RECEIVED:	10/22/82	JA: OK					
8305429	16825	3514920198	103		HEINRICHS #1-20					
-EARLSBORO OIL AND GAS CO INC			RECEIVED:	10/22/82	JA: OK					
8305379	17050	3509322462	103		OXLEY #1-11	RINGWOOD				
8305380	17051	3507323323	103		VADOER #1-36	SOONER TREND				
8305378	17049	3509322352	103		VOTH #1-21	RINGWOOD				
-EARLSBORO OIL AND GAS CO INC			RECEIVED:	10/27/82	JA: OK					
8305757	17054	3509320720	103		HILLABOLT #1-4	SOONER TREND				
-EARTH ENERGY RESOURCES INC			RECEIVED:	10/27/82	JA: OK					
8305755	16923	3511921752	103		TUCKER #3	RINGWOOD				
-ENERGY LOCATION & DEVELOPMENT			RECEIVED:	10/25/82	JA: OK					
8305567	15392	3514722885	103		HOPPER #3	SOUTH MEHAN				
-EXXON CORPORATION			RECEIVED:	10/27/82	JA: OK					
8305783	17073	3500721880	103		CAMRICK UNIT #2435	CAMRICK UPPER MORROW				
8305800	17071	3500722077	103		CAMRICK UNIT #2974	CAMRICK UPPER MORROW				
8305782	17072	3504722867	103		J CRIDER #2	SOUTH HUNTER				
-F C O OIL CORP			RECEIVED:	10/25/82	JA: OK					
8305569	16979	3507300000	103		FAY LEE 1-2	SOONER TREND				
-FUNK EXPLORATION INC			RECEIVED:	10/22/82	JA: OK					
8305434	16830	3500722261	103		FOSTER #3-18	DOMBAY				
8305435	16831	3501722032	103		GLEICHMAN #1	SOONER TREND				
-G. W. SULLIVANT			RECEIVED:	10/27/82	JA: OK					
8305790	17178	3508321892	103		RATTLESNAKE DEN #1	NORTH HULL				
-GODFREY OIL PROPERTIES			RECEIVED:	10/22/82	JA: OK					
8305410	15052	3509500000	108		UNIVERSITY OF TULSA (RAG) #2					
-GODFREY OIL PROPERTIES			RECEIVED:	10/25/82	JA: OK					
8305600	15060	3509500000	108		AYLESWORTH UNIT A-1 (CHAPMAN) #1					

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8305604	15048	3509500000	108		AYLESWORTH UNIT A-1 #6		1.6	PIONEER GAS PRODU
8305601	15059	3509500000	108		AYLESWORTH UNIT A-1 #8		1.6	PIONEER GAS PRODU
8305605	15038	3509500000	108		GODFREY-NEFF #1		3.9	PIONEER GAS PRODU
8305603	15049	3509500000	108		ROSE UNIT #2		2.8	PIONEER GAS PRODU
8305602	15050	3509500000	108		SUNRAY-NEFF #1		4.5	PIONEER GAS PRODU
-GODFREY OIL PROPERTIES			RECEIVED:	10/27/82	JA: OK			
8305794	15070	3509500000	108		AYRES #5		1.0	PIONEER GAS PRODU
8305814	15041	3509500000	108		BROWN #1		3.2	PIONEER GAS PRODU
8305813	15039	3509500000	108		BROWN #3		3.2	PIONEER GAS PRODU
8305793	15047	3509500000	108		O L BEARD #1		4.3	PIONEER GAS PRODU
-GRACE PETROLEUM CORPORATION			RECEIVED:	10/25/82	JA: OK			
8305574	16948	3505100000	103		WHITENER 2-19	N W CHITWOOD	0.0	MOBIL OIL CORP
-H L WIRICK JR			RECEIVED:	10/25/82	JA: OK			
8305573	16929	3513321770	103		REED TRUST "A" #1	REED FARM	110.0	KANOKLA ENERGY CO
-HARPER OIL COMPANY			RECEIVED:	10/27/82	JA: OK			
8305807	17095	3508720708	103		DAVENPORT #1	WEST PURCELL	21.0	
-HIGHLANDS GOODALL & GREER INC			RECEIVED:	10/22/82	JA: OK			
8305385	17665	3501721971	102-4		LUDWIG #1-6		0.0	PHILLIPS PETROLEU
-HPC INC			RECEIVED:	10/25/82	JA: OK			
8305584	16653	3503920337	103		HERRING #1	SOUTH THOMAS	3.0	TRANSOK PIPELINE
-INEXCO OIL COMPANY			RECEIVED:	10/22/82	JA: OK			
8305414	21437	3503920863	107-0P		JACKSON #1-21	N W BUTLER	730.0	PANHANDLE EASTERN
-J M HUBER CORPORATION			RECEIVED:	10/22/82	JA: OK			
8305386	17031	3500722203	103		LIGHT "F" #1	N W GREENOUGH	40.0	PANHANDLE EASTERN
-JACK BOWLES			RECEIVED:	10/27/82	JA: OK			
8305810	14585	3504722121	103		JAYNE #1	CROW NEST CREEK	0.0	ARCO OIL & GAS CO
8305803	14583	3504722499	103		NONA JOHNSON B-1	0.0	AMINOIL USA INC	
8305802	14582	3504722637	103		NONA JOHNSON C-1	0.0	AMINOIL USA INC	
8305811	14586	3504722476	103		POSPISIL #1	0.0	ARCO OIL & GAS CO	
-JERRY SCOTT DRILLING CO INC			RECEIVED:	10/22/82	JA: OK			
8305442	16774	3506321323	103		HOLMAN DAVIS #1	54.0	WELLHEAD ENTERPRI	
8305432	16828	3506321396	103		JOHN TURNER #2A	54.5	WELLHEAD ENTERPRI	
8305433	16829	3506321408	103		WOODRUM #1	45.0	WELLHEAD ENTERPRI	
-JET OIL COMPANY			RECEIVED:	10/25/82	JA: OK			
8305566	16989	3508121342	103		JOHNSON "B" #1	7.0	SUN GAS CO	
-JMAC ENGINEERING INC			RECEIVED:	10/25/82	JA: OK			
8305352	17459	3508121539	102-2	103	PRUITT #1	51.1	SWAB CORP	
-JMAC ENGINEERING INC			RECEIVED:	10/27/82	JA: OK			
8305765	17227	3508121424	103		LOBB #1	93.4	SWAB CORP	
-JOE A HUITT			RECEIVED:	10/25/82	JA: OK			
8305555	17498	3503700000	108		MILLER-FOULER 6A	1.3	ARCO OIL & GAS CO	
-JOE D DAVIS			RECEIVED:	10/22/82	JA: OK			
8305368	16922	3506120490	103		KINSEY #1	0.0	ARKANSAS LOUISIAN	
-JOHN A KIENZLE			RECEIVED:	10/25/82	JA: OK			
8305369	16935	3511100000	103		C B NICHOLSON #2	2.5	PHILLIPS PETROLEU	
-KEITH F WALKER			RECEIVED:	10/25/82	JA: OK			
8305576	16704	3501900000	103		BARTLETT JOINT VENTURE #1	0.0	TRANSOK PIPE LINE	
-KETAL OIL PRODUCING CO			RECEIVED:	10/27/82	JA: OK			
8305778	17195	3504722974	103		NEUNDORK #1	27.6		
-L & N EXPLORATION INC			RECEIVED:	10/22/82	JA: OK			
8305382	17060	3510321279	103		ALBERT PEARSON #1-31	182.0	AMINOIL USA INC	
-L & T OIL & GAS INC			RECEIVED:	10/22/82	JA: OK			
8305381	17059	3507322097	103		M B JONES #6-1	833.0	CONOCO INC	

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-LADD PETROLEUM CORPORATION			RECEIVED:	10/22/82	JA: OK	ELK HORN	15.0	AMINOIL USA INC
8305417 09241	3504700000		108-ER	WAINKAUF #1				
-LADD PETROLEUM CORPORATION			RECEIVED:	10/27/82	JA: OK	N OKARCHE	66.5	DELHI GAS PIPELIN
8305786 17080	3507323130		103	VOGT #4				
-LATCO ENERGY INC			RECEIVED:	10/27/82	JA: OK	SOONER TREND	0.0	PHILLIPS PETROLEU
8305789 17172	3507300000		103	EBERHARDT #35* #1				
-LEUDE OIL & GAS INC			RECEIVED:	10/27/82	JA: OK	WEST GEARY FIELD	100.0	OKLAHOMA GAS & EL
8305756 16914	3501121549		103	KURTZ #1				
-M C S EXPLORATION CORP			RECEIVED:	10/22/82	JA: OK			
8305374 17002	3508121477		103	JORDAN #1				
8305373 17001	3503723482		103	SLY #1				
-M RESOURCES INC			RECEIVED:	10/25/82	JA: OK			
8305564 17103	3503723691		103	ARMSTRONG #1				
8305590 17107	3511721400		103	BLANCHE #1				
8305557 17108	3511721550		103	BLANCHE #2				
8305592 17105	3511721320		103	EVANS #1				
8305591 17106	3511721420		103	PRESLEY #1				
8305556 17109	3511721148		103	SHEELEY #1				
8305593 17104	3503723664		103	TRAVIS #1				
-M RESOURCES INC			RECEIVED:	10/27/82	JA: OK			
8305771 17102	3511721456		103	LUSK #1				
-MACKELLAR INC			RECEIVED:	10/25/82	JA: OK	WEST EDMOND	0.0	PHILLIPS PETROLEU
8305597 15399	3510920484		103	BROWN #1				
-MARION CORPORATION			RECEIVED:	10/25/82	JA: OK	LITTLE RANCH	760.0	
8305565 17030	3514722745		102-2	WILLIAM LITTLE #M-2				
-MASTERS ENERGY CORP			RECEIVED:	10/25/82	JA: OK	S E FAULKNER	0.0	PANHANDLE EASTERN
8305554 18105	3515121276		102-4	MCOSKER #1-25				
-MAY PETROLEUM INC			RECEIVED:	10/22/82	JA: OK		182.5	
8305443 16893	3500722226		103	OAKLEY #1			182.5	
8305444 16834	3504521005		103	OKLAHOMA STATE #1-13				
-MILLER EXPLORATION CO			RECEIVED:	10/22/82	JA: OK	EAST DAVENPORT	0.0	MERIDIAN ENERGY I
8305412 16701	3508121547		103	RECTOR #6				
-MORAN EXPLORATION INC			RECEIVED:	10/25/82	JA: OK	NELLIE	0.0	ARKANSAS LOUISIAN
8305583 16334	3513720732		103	FISHER HEIRS #1				
-MUSTANG PRODUCTION CO.			RECEIVED:	10/22/82	JA: OK	FLINT CREEK	28.0	SUN EXPLORATION &
8305388 17038	3508720517		103	BELL #1-26			38.0	SUN EXPLORATION &
8305389 17039	3508720672		103	HARRIS #1-25				
-MUSTANG PRODUCTION CO.			RECEIVED:	10/27/82	JA: OK	FLINT CREEK	28.0	SUN EXPLORATION &
8305804 17056	3508720537		103	BELL #2-26				
8305805 17057	3508720569		103	BELL #3-26				
8305806 17058	3508720582		103	BELL #4-26				
-NOVA ENERGY CORPORATION			RECEIVED:	10/27/82	JA: OK	FLINT CREEK	28.0	SUN EXPLORATION &
8305768 21527	3512920750		107-DP	COOK #1-23			0.0	
8305769 21528	3505121231		107-DP	LANCASTER #1-25A			0.0	
-O L SCOTT JR			RECEIVED:	10/22/82	JA: OK	FLINT CREEK	28.0	SUN EXPLORATION &
8305420 16999	3504722844		103	PATOCKA #1				
-O L SCOTT JR			RECEIVED:	10/25/82	JA: OK	S W DOUGLAS	275.0	ARCO OIL & GAS CO
8305560 17000	3504722791		103	BRAUNER #1				
-O N SELLERS			RECEIVED:	10/22/82	JA: OK	S W DOUGLAS	256.0	ARCO OIL & GAS CO
8305421 16754	3511122678		103	ROY #1				
8305422 16755	3511122615		103	TOGIE #1				
-OLD DOMINION OIL CORP			RECEIVED:	10/27/82	JA: OK	GREASY CREEK	146.0	TRANSOK PIPE LINE
8305785 17075	3509322230		103	SODOMSKY #1			54.8	TRANSOK PIPE LINE
							650.0	UNALLOCATED

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-PACIFICA ENERGIES LTD								
8305598	15300	3508100000	102-4	RECEIVED: 10/25/82	DOBRY #2	PARKLAND	275.0	COLORADO GAS COMP
-PETRO-ENERGY EXPLORATION INC								
8305383	17066	3508321913	103	RECEIVED: 10/22/82	DOROTHY #1-13	WEST MULHALL	100.0	AMINOIL U S A INC
-PETRO-ENERGY EXPLORATION INC								
8305549	11265	3513300000	108	RECEIVED: 10/25/82	BAR-S #1-34	WEST SASAKUA	15.0	KANOKLA ENERGY CO
-PHILLIPS PETROLEUM COMPANY								
8305405	17655	3501721634	108	RECEIVED: 10/22/82	MACH D #1	Y-P-R TREND	8.2	PANHANDLE EASTERN
-PLESS GAS & EXPLORATION								
8305430	16826	3511123350	103	RECEIVED: 10/22/82	FOUTCH #1	S BEGGS	15.0	PHILLIPS PETROLEUM
8305431	16827	3511121881	103	RECEIVED: 10/27/82	PLUNKETT #1	SOUTH BEGGS	54.0	PHILLIPS PETROLEUM
-PRIME ENERGY CO								
8305801	14505	3508121474	102-4	RECEIVED: 10/22/82	CAMP #10-2	SW MT VERNON	175.0	SUN GAS CO
-PSEC INC								
8305427	16822	3512120899	103	RECEIVED: 10/27/82	SMITH #2-1	FEATHERSON	0.0	S E GAS TRANSMISS
-QUANAH COMPANY								
8305812	15012	3512120061	108	RECEIVED: 10/25/82	MACONA #1	QUINTON - FEATHERSTON	9.8	SOUTHEAST TRANSMI
-RALPH E PLOTNER OIL & GAS INVEST								
8305580	17007	3501722191	103	RECEIVED: 10/22/82	PAUL A #1	WEST PIEDMONT	5.8	PHILLIPS PETROLEUM
-REBEL OIL CO								
8305808	02342	3511900000	108	RECEIVED: 10/22/82	W D GREENSHIELDS #1-8	SOUTHEAST PRAIRIE VIE	1.9	CITIES SERVICE GA
8305409	02343	3511900000	108	RECEIVED: 10/22/82	W D GREENSHIELDS #3	SOUTHEAST PRAIRIE VIE	0.0	CITIES SERVICE GA
8305407	02341	3511900000	108	RECEIVED: 10/22/82	W D GREENSHIELDS PHILLIPS-PORTER 1A	SOUTHEAST PRAIRIE VIE	0.4	CITIES SERVICE GA
-RICK BUCK								
8305387	17037	3507323216	103	RECEIVED: 10/22/82	YOST #1-27	SOONER TREND	54.0	PHILLIPS PETROLEUM
-RICKS EXPLORATION CO								
8305366	16887	3501521050	103	RECEIVED: 10/22/82	MARY LOU #1	S W BINGER	9.0	PIONEER GAS PRODU
-RIMROCK GAS CO								
8305416	03812	3500900000	108	RECEIVED: 10/22/82	DENBY #1 39091	MORAVIA	7.2	ARKANSAS LOUISIAN
-ROBERT A MASON								
8305766	17232	3510300000	103	RECEIVED: 10/27/82	MCGUIRE #1	MCGUIRE	7.3	AMINOIL USA INC
-ROBERT P HENDRICK								
8305558	17023	3503120587	103	RECEIVED: 10/25/82	ALLEN #3	EAST LAWTON	7.3	COCHANKE NATURAL
-ROBERT P HENDRICK								
8305799	17024	3503100000	103	RECEIVED: 10/27/82	CHAMBERS #2	EAST LAWTON	7.3	MANN INDUSTRIES I
-SAMSON RESOURCES COMPANY								
8305392	16882	3507720236	103	RECEIVED: 10/22/82	CHOCIAV UNIT #1	KINTA	54.7	ARKANSAS LOUISIAN
-SAMSON RESOURCES COMPANY								
8305559	18076	3506120525	102-4	RECEIVED: 10/25/82	MOSBY #1	EAST KEOTA	410.6	ARKANSAS LOUISIAN
8305553	14785	3507720241	102-4	RECEIVED: 10/27/82	PICKETT #1	KINTA	365.0	ARKANSAS LOUISIAN
-SAMSON RESOURCES COMPANY								
8305772	18447	3512120923	102-2	RECEIVED: 10/27/82	PITTSBURG #1	KIOVA	547.5	ARKANSAS LOUISIAN
8305773	18448	3512120914	102-2	RECEIVED: 10/25/82	SULLIVAN NO 1	KIOVA	1095.0	ARKANSAS LOUISIAN
-SEARCH DRILLING CO								
8305561	16995	3500722189	103	RECEIVED: 10/22/82	CORNELSON #1-24	S BALKO	5.6	INTER NORTH INC
8305577	16966	3515321246	103	RECEIVED: 10/22/82	HOLLOWAY #1-2	NE CEDARDALE	260.0	MICHIGAN-WISCONSI
-SERVICE DRILLING CO								
8305424	16778	3508322047	103	RECEIVED: 10/22/82	LUCILLE #1-33		15.0	CITIES SERVICE GA
8305426	16780	3508322006	103	RECEIVED: 10/22/82	MAJOR #1-33		15.0	CITIES SERVICE GA
8305425	16779	3508321953	103	RECEIVED: 10/22/82	VEDA #1-28		15.0	CITIES SERVICE GA
-SIDWELL OIL & GAS INC								
8305394	00135	3500900000	108	RECEIVED: 10/22/82	KNOW #1 009-36598	S ERICK	13.0	EL PASO NATURAL G
8305393	00134	3500900000	108	RECEIVED: 10/22/82	RAY #1 009-36597	S ERICK	11.7	EL PASO NATURAL G

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305493		4710721157	103		BAYLES - CORBIN #1-A	UNION DISTRICT	5.0	CONSOLIDATED GAS
8305494		4710721158	103		BAYLES - CORBIN #2	UNION DISTRICT	5.0	CONSOLIDATED GAS
8305495		4707321275	103		C A JAMES #3	GRANT DISTRICT	5.0	CONSOLIDATED GAS
8305498		4707321262	103		DONALD PETTY #2	GRANT DISTRICT	5.0	CONSOLIDATED GAS
8305496		4707321295	103		H NORRIS #2	GRANT DISTRICT	2.0	CONSOLIDATED GAS
8305495		4707321273	103		J W ELLIOTT #3	GRANT DISTRICT	2.0	CONSOLIDATED GAS
8305492		4710721108	103		JACK WILCOXEN #2	UNION	0.0	CONSOLIDATED GAS
8305498		4710721174	103		K H MCCAULEY #1	UNION	2.0	CONSOLIDATED GAS
8305497		4710721169	103		ORIS JOHNSON #3	UNION	2.0	CONSOLIDATED GAS
8305491		4710721081	103		SADIE MCATEE #1	UNION	1.0	
-J & J ENTERPRISES INC				RECEIVED: 10/25/82	JA: WV			
8305487		4703302462	103		B-230	CLARK	200.0	CONSOLIDATED GAS
8305486		4700101329	103		B-287	VALLEY	200.0	CONSOLIDATED GAS
-STONESTREET LANDS CO				RECEIVED: 10/25/82	JA: WV			
8305507		4700701556	103		A A KNICELY #1-S-104	ELMIRA	21.0	COLUMBIA GAS TRAN
8305543		4700701721	103		BONNIE OWENS #1-S-18	ELMIRA	29.0	COLUMBIA GAS TRAN
8305544		4700701708	103		BRADY STAVE #1-S-136	ELMIRA	15.0	COLUMBIA GAS TRAN
8305523		4700701683	103		BRADY STAVE #1-S-68	ELMIRA	22.0	COLUMBIA GAS TRAN
8305522		4700701684	103		BRADY STAVE #1-S-89	ELMIRA	21.0	COLUMBIA GAS TRAN
8305518		4700701689	103		BRADY STAVE #2-S-208	ELMIRA	20.0	COLUMBIA GAS TRAN
8305542		4700701730	103		CARR #1-S-238	ELMIRA	24.0	COLUMBIA GAS TRAN
8305548		4701303337	103		D SHAFFER #1-S-223	ELMIRA	25.0	COLUMBIA GAS TRAN
8305545		4701303273	103		EAKLE #4 1-S-119	ELMIRA	22.0	COLUMBIA GAS TRAN
8305537		4700701705	103		G HART #1-S-233	ELMIRA	15.0	COLUMBIA GAS TRAN
8305534		4700701702	103		G HART #2-S-61	ELMIRA	16.0	COLUMBIA GAS TRAN
8305536		4700701704	103		G HART #4-S-95	ELMIRA	16.0	COLUMBIA GAS TRAN
8305510		4700701697	103		G HART #6-S-137	ELMIRA	18.0	COLUMBIA GAS TRAN
8305509		4700701698	103		G HART #7-S-150	ELMIRA	14.0	COLUMBIA GAS TRAN
8305547		4701501772	103		G L WEEKS #1-S-86	ELMIRA	31.0	COLUMBIA GAS TRAN
8305516		4701501773	103		G L WEEKS #2-S-110	ELMIRA	14.0	COLUMBIA GAS TRAN
8305535		4700701703	103		GLENARD HART #5-S-96	ELMIRA	18.0	COLUMBIA GAS TRAN
8305529		4700701669	103		H D HART #2-S-210	ELMIRA	25.0	COLUMBIA GAS TRAN
8305511		4700701693	103		H HART #4-S-252	ELMIRA	9.0	COLUMBIA GAS TRAN
8305531		4700701667	103		HART #1-S-209	ELMIRA	23.0	COLUMBIA GAS TRAN
8305530		4700701668	103		HART #1-S-216	ELMIRA	22.0	COLUMBIA GAS TRAN
8305525		4700701677	103		HERBERT HART #1-S-236	ELMIRA	22.0	COLUMBIA GAS TRAN
8305524		4700701681	103		HERBERT HART #2-S-250	ELMIRA	20.0	COLUMBIA GAS TRAN
8305515		4701501810	103		J ANDERSON #1-S-82	ELMIRA	25.0	COLUMBIA GAS TRAN
8305513		4701501844	103		JAY STARCHER #1-S-83	ELMIRA	27.0	COLUMBIA GAS TRAN
8305506		4700701653	103		KEENER #1-S-179	ELMIRA	25.0	COLUMBIA GAS TRAN
8305504		4700701655	103		L T KEENER #2-S-199	ELMIRA	19.0	COLUMBIA GAS TRAN
8305527		4700701672	103		L T KEENER #3-S-204	ELMIRA	13.0	COLUMBIA GAS TRAN
8305528		4701303254	103		LINDA MOORE #1-S-155	ELMIRA	39.0	COLUMBIA GAS TRAN
8305528		4700701671	103		LUCILLE BOURGEOIS #1-S-187	ELMIRA	29.0	COLUMBIA GAS TRAN
8305505		4700701654	103		MCORROW #1-S-185	ELMIRA	24.0	COLUMBIA GAS TRAN
8305503		4700701656	103		MCORROW #2-S-200	ELMIRA	30.0	COLUMBIA GAS TRAN
8305532		4700701666	103		OMEY JAMES #3-S-206	ELMIRA	20.0	COLUMBIA GAS TRAN
8305508		4700701699	103		R G HART #2-S-151	ELMIRA	14.0	COLUMBIA GAS TRAN
8305538		4700701706	103		R G HART #3-S-92	ELMIRA	16.0	COLUMBIA GAS TRAN
8305541		4701303209	103		REED-JARVIS #1-S-51	ELMIRA	25.0	COLUMBIA GAS TRAN
8305512		4701501912	103		REED-JARVIS #2-S-59	ELMIRA	22.0	COLUMBIA GAS TRAN
8305519		4700701688	103		REVELE HART #1-S-237	ELMIRA	12.0	COLUMBIA GAS TRAN
8305526		4700701674	103		RICHARDS #1-S-219	ELMIRA	22.0	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8305502		4700701659	103		RUIE HALL #1-S-105	ELMIRA	20.0	COLUMBIA GAS TRAN
8305533		4700701660	103		RUIE HALL #2-S-176	ELMIRA	32.0	COLUMBIA GAS TRAN
8305540		4701303250	103		SHAFFER #1-S-143	ELMIRA	26.0	COLUMBIA GAS TRAN
8305546		4701303334	103		SHAFFER STARCHER #3-S-202	ELMIRA	30.0	COLUMBIA GAS TRAN
8305514		4701501813	103		SPENCER HALL #2-S-42	ELMIRA	23.0	COLUMBIA GAS TRAN
8305520		4700701686	103		TUCK #1-S-247	ELMIRA	25.0	COLUMBIA GAS TRAN
8305517		4700701692	103		TUCK #2-S-248	ELMIRA	23.0	COLUMBIA GAS TRAN
8305521		4700701685	103		TUCK #3-S-249	ELMIRA	22.0	COLUMBIA GAS TRAN

** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER, CO								

-BELCO PETROLEUM CORPORATION								
8305485	CD0384-82	0504506309	103	RECEIVED: 10/25/82	J A: CO 1	BUTTERMILK CANYON UNIT	0.0	WESTERN SLOPE GAS
-CELSIUS ENERGY CO								
8305468	CD0399-82	0510308850	103	RECEIVED: 10/25/82	J A: CO 1	CATHEDRAL	51.0	WESTERN SLOPE GAS
8305467	CD0398-82	0510308849	103	107-TF MFS FEDERAL #28-4		CATHEDRAL	230.0	WESTERN SLOPE GAS
8305469	CD0400-82	0510308848	103	107-TF MFS FEDERAL #29-2		CATHEDRAL	144.0	WESTERN SLOPE GAS
-CHANDLER & ASSOCIATES INC								
8305460	CD0333-82	0510308336	108	RECEIVED: 10/25/82	J A: CO 1	DOUGLAS CREEK NORTH	20.0	WESTERN SLOPE GAS
8305461	CD0331-82	0510305226	108	FORK UNIT 7-12-1-2		DRAGON TRAIL	13.0	NORTHWEST PIPELIN
8305459	CD0381-82	0510307775	108	NORTH DOUGLAS CREEK #16		DRAGON TRAIL	17.0	NORTHWEST PIPELIN
-CHEVRON U S A INC								
8305453	CD0397-82	0510308813	103	RECEIVED: 10/25/82	J A: CO 1	RANGELY	3.3	NORTHWEST PIPELIN
8305452	CD0395-82	0510308814	103	C T CARNEY 38X4		RANGELY	6.6	NORTHWEST PIPELIN
8305456	CD0396-82	0510308865	103	C T CARNEY 39X4		RANGELY	5.3	NORTHWEST PIPELIN
-COSEA RESOURCES (USA) LIMITED								
8305484	CD0406-82	0510308768	102-2	RECEIVED: 10/25/82	J A: CO 1	WILDCAT	46.4	NORTHWEST PIPELIN
-FUEL RESOURCES DEVELOPMENT CO								
8305464	CD0401-82	0504506349	102-2	RECEIVED: 10/25/82	J A: CO 1	ATCHEE	76.6	WESTERN SLOPE GAS
8305463	CD0402-82	0504506366	103	FEDERAL 6-7		SOUTH CANYON FIELD	168.5	WESTERN SLOPE GAS
8305462	CD0392-82	0510308800	102-2	RECEIVED: 10/25/82	J A: CO 1	CATHEDRAL	163.8	MOUNTAIN FUEL SUP
-GULF OIL CORPORATION								
8305478	CD0414-82	0510308547	103	RECEIVED: 10/25/82	J A: CO 1	DRAGON TRAIL FIELD	150.0	
-MITCHELL ENERGY CORPORATION								
8305477	CD0409-82	0504506235	103	RECEIVED: 10/25/82	J A: CO 1	WILDCAT (DAKOTA)	0.0	
-NORRIS OIL CO								
8305482	CD0371-82	0507708494	102-2	RECEIVED: 10/25/82	J A: CO 1	SHIRE GULCH	29.0	ROCKY MOUNTAIN NA
-PIUTE ENERGY CO								
8305480	CD0383-82	0504506390	102-2	RECEIVED: 10/25/82	J A: CO 1	GARFIELD II UNIT	111.0	NORTHWEST PIPELIN
-DOME PETROLEUM CORP								
8305479	CD0390-82	1507520340	103	RECEIVED: 10/25/82	J A: KS 1	BRADSHAW	166.8	SUNFLOWER ELECTRI
-CHEVRON U S A INC								
8305457	UD0412-82	4304730457	103	RECEIVED: 10/25/82	J A: UT 1	RED WASH	1.4	NORTHWEST PIPELIN
8305458	UD0413-82	4304730458	103	RWU #257		RED WASH	6.2	NORTHWEST PIPELIN
8305455	UD0411-82	4304731083	103	RWU #258		RED WASH	76.7	NORTHWEST PIPELIN
8305454	UD0410-82	4304731078	103	RWU #274		RED WASH	8.0	NORTHWEST PIPELIN
-CIG EXPLORATION INC								
8305465	UD0391-82	4304731146	103	RECEIVED: 10/25/82	J A: UT 1	NATURAL BUTTES	547.0	COLORADO INTERSTA
8305466	UD0408-82	4304731223	103	107-TF CIGE 89D-34-9-22J		NATURAL BUTTES	456.0	COLORADO INTERSTA
-COASTAL OIL & GAS CORP								
8305475	UD0407-82	4304730850	103	RECEIVED: 10/25/82	J A: UT 1	NATURAL BUTTES	474.0	COLORADO INTERSTA
-DEL-RIO RESOURCES INC								
8305481	UD0386-82	4304730641	102-2	RECEIVED: 10/25/82	J A: UT 1	FLATROCK	25.0	PRESSURE TRANSPOR
DEL-RIO 30-2A								

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JD NO JA DKT API NO D SEC(1) SEC(2) WELL NAME

UNION OIL COMPANY OF CALIF
8305730 62-2865 1770340351
-CITIES SERVICE COMPANY
8305658 62-3118 4270340013
-TENNECO OIL COMPANY
8305655 62-3129 4270640071

** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, CASPER, WY *****
-DIAMOND SHAMROCK CORPORATION
8305651 W159-2 2507321354
-CANTARRA PETROLEUM INC
8305640 ND148-2 3300700757
8305636 ND144-2 3300700326
8305639 ND147-2 3300700709
8305637 ND145-2 3300700567
8305638 ND146-2 3300700662
-FARMERS UNION CENTRAL EXCHANGE INC
8305630 ND 137-2 3300700749
-LADD PETROLEUM CORPORATION
8305650 ND158-2 3305301387
-NUCORP ENERGY INC
8305649 ND 157-2 3300700707
-TENNECO OIL COMPANY
8305625 ND 131-2 3300700719
-AMOCO PRODUCTION CO
8305652 W160-2 4903721693
-BASIC EARTH SCIENCE SYSTEMS INC
8305616 W80-2 4902720417
-BURLINGTON NORTHERN INC
8305618 W83-2 4902720492
8305617 W82-2 4902720485
-CHEVRON U S A INC
8305634 W142-2 4902320334
8305611 W617-1 4904120361
8305633 W141-2 4904120323
-CHINOOK RESOURCES INC
8305622 W103-2 4900921843
8305621 W102-2 4900921797
-CITIES SERVICE COMPANY
8305619 W86-2 4902921029
-DEVON CORPORATION
8305620 W101-2 Y 4903721956
-DIAMOND SHAMROCK CORPORATION
8305628 W135-2 4900921998
-EXETER EXPLORATION COMPANY
8305647 W155-2 4900921941
8305648 W156-2 4900921959
8305646 W154-2 4900921971
-JERRY CHAMBERS-OIL PRODUCER
8305642 W150-2 4903721719
8305643 W151-2 4903721719
-MARATHON OIL COMPANY

FIELD NAME

EAST CAMERON
MATAGORDA ISLAND
GALVESTON AREA
WILDCAT
WHISKEY JOE
T R
WHISKEY JOE
BEAVER CREEK
CHATEAU
ELKHORN RANCH
SCAIRT WOMEN
ELKHORN RANCH
ANDERSON COULEE
SEVEN MILE GULCH
BUCK CREEK
BUCK CREEK
BUCK CREEK
CARTER CREEK-WHITNEY
PAINTER RESERVOIR
PAINTER RESERVOIR UNI
SCOTT
SCOTT FIELD
MEETEETSE
WILDCAT
WELL DRAW
SCOTT
SCOTT
SCOTT
ECHO SPRINGS
ECHO SPRINGS
PROD

3600.0 TENNESSEE GAS PIP
1650.0 INTERNORTH INC
0.0 TENNESSEE GAS PIP
21.0
0.0 WESTERN GAS PROCE
0.0 WESTERN GAS PROCE
0.0 WESTERN GAS PROCE
0.0
0.0
45.0 KOCH HYDROCARBON
12.2 KOCH HYDROCARBON
67.0 KOCH HYDROCARBON
191.0 MONTANA-DAKOTA UT
1182.0
250.0 PHILLIPS PETROLEU
30.0 PHILLIPS PETROLEU
350.0 PHILLIPS PETROLEU
411.4 COLUMBIA GAS TRAN
274.0 INTERNORTH INC
340.0 INTERNORTH INC
4.5 CHINOOK CONSTRUCT
19.5 CHINOOK CONSTRUCT
108.0
227.0 NORTHWEST PIPELIN
9.0 PHILLIPS PETROLEU
30.0 CHINOOK CONSTRUCT
35.0 CHINOOK CONSTRUCT
29.0 CHINOOK CONSTRUCT
150.0 CITIES SERVICE GA
150.0 CITIES SERVICE GA
PURCHASER

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD PURCHASER
8305641	W 19-2	4902921070	103	RECEIVED:	FREEHAN #10 (EMBAR & TENSLEEP FORM)	OREGON BASIN	8.5 COLORADO INTERSTA
-MICHIGAN WISCONSIN PIPE LINE CO			107-DP	RECEIVED:	LYSITE #1-9	MADDERN	0.0 MICHIGAN WISCONSIN
8305631	W13-2	4901320786	103	RECEIVED:	FEDERAL MANDERSON #9-24	MANDERSON	1095.0 MONTANA-DAKOTA UT
-MOBIL OIL CORP			107-OP	RECEIVED:	PFEIFFER NO 1-10	CEDAR GAP UNIT	1450.0 COLORADO INTERSTA
8305624	W13-2	4901321080	103	RECEIVED:	PTS 32-8 FEDERAL	FONTENELLE	27.0 PACIFIC GAS TRANS
-MONSANTO COMPANY			107-OP	RECEIVED:	FEDERAL 2-19	FULLER II	20.0 INTERNORTH INC
8305627	W13-2	4901321080	103	RECEIVED:	FEDERAL 4-20	FORT UNION	20.0 INTERNORTH INC
-NATURAL GAS CORPORATION OF CALIF			107-TF	RECEIVED:	CIGC FEDERAL 1A-30-14-92	ROBBERS GULCH	128.0 NORTHWEST PIPELIN
8305635	W13-2	4902320255	103	RECEIVED:	SUN FEDERAL 1A-34-14-92	ROBBERS GULCH	140.0 NORTHWEST PIPELIN
-MORTEN GAS & OIL CO			107-TF	RECEIVED:	CHURCH BUTTES UNIT #34	CHURCH BUTTES	277.0 MOUNTAIN FUEL SUP
8305663	W161-2	4901321062	103	RECEIVED:	PINE TREE UNIT #20-33	PINE TREE	49.0 WESTERN GAS PROCE
8305644	W152-2	4901321064	103	RECEIVED:	PINE TREE UNIT 17-30	PINE TREE	0.0 WESTERN GAS PROCE
-SNODGER OIL CO			102-4	RECEIVED:	PINE TREE UNIT 21-20	PINE TREE	50.0 WESTERN GAS PROCE
8305626	W132-2	4900720700	102-4	RECEIVED:	PINE TREE UNIT 28-16	PINE TREE	21.0 WESTERN GAS PROCE
8305629	W135-2	4900720697	102-4	RECEIVED:	PINE TREE UNIT 28-7	PINE TREE	65.0 WESTERN GAS PROCE
-NEWPRO COMPANY			102-4	RECEIVED:	PINE TREE UNIT 33-13	PINE TREE	38.0 WESTERN GAS PROCE
8305632	W133-2	4903720427	102-4	RECEIVED:	PINE TREE UNIT 34-12	PINE TREE	1.0 WESTERN GAS PROCE
-WOODS PETROLEUM CORPORATION			102-4	RECEIVED:	PINE TREE UNIT 5-31	PINE TREE	1.0 WESTERN GAS PROCE
8305623	W129-2	4900526371	102-4	RECEIVED:	PINE TREE UNIT 6-24	PINE TREE	1.0 WESTERN GAS PROCE
8305619	W73-2	4900526113	102-4	RECEIVED:	PINE TREE UNIT 7-26	PINE TREE	82.0 WESTERN GAS PROCE
8305606	W 605-1	4900526636	102-4	RECEIVED:			
8305608	W611-1	4900525484	102-4	RECEIVED:			
8305607	W 609-1	4900921552	102-4	RECEIVED:			
8305609	W613-1	4900921740	102-4	RECEIVED:			
8305610	W615-1	4900921721	102-4	RECEIVED:			
8305614	W29-2	4900526287	102-4	RECEIVED:			
8305613	W19-2	4900526850	102-4	RECEIVED:			
8305612	W14-2	4900526930	102-4	RECEIVED:			

SOURCE DATA FOR THIS NOTICE IS AVAILABLE ON MAGNETIC TAPE FROM THE NATIONAL TECHNICAL INFORMATION SERVICE (NTIS). FOR INFORMATION, CONTACT STUART WEISMAN (NTIS) AT (703) 487-4808, 5285 PORT ROYAL RD, SPRINGFIELD, VA 22161, OR SANDRA SPEAR (FERC) (202) 357-8681.

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 10 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Categories within each NCPA sections are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)

102-3: New well (1000 ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old bcs lease
Section 107-DP: 15,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal seams
107-DV: Devonian shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-32214 Filed 11-24-82; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-2-FR 2249-1]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Actions.

SUMMARY: The purpose of this notice is to announce that between July 1, 1982 and September 30, 1982, the U.S. Environmental Protection Agency, Region II, issued two final determinations relative to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 (45 FR 52676). A listing of these final determinations includes two applicability determinations. These PSD determinations are final actions under the Clean Air Act.

DATES: The effective dates for the above PSD determinations are delineated in the following chart. (See Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA has made final determinations relative to the sources listed below:

Name of applicant	Type of source	Approximate location	Type of final action	Date of final action
Amerada Hess Corporation Washington and Warren Counties	Petroleum refinery reactivation New resource recovery facility	Port Reading, N.J. Glens Falls, N.Y.	PSD non-applicability PSD applicability	Sept. 20, 1982. July 9, 1982.

This notice contains only a list of the sources which have received PSD determinations. Copies of these determinations and related materials are available for public inspection at: Environmental Protection Agency, Region II Office, Permits Administration Branch, Office of Policy and Management, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711.

Under Section 307(b)(1) of the Clean Air Act (the Act), judicial review of these determinations is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on January 25, 1983. Under Section 307(b)(2) of the Act, these determinations shall *not* be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: November 5, 1982.

Richard Dewling,
Acting Regional Administrator.

[FR Doc. 82-32138 Filed 11-24-82; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-2252-4]

Availability of Environmental Impact Statements Filed November 15 Through November 19, 1982, Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities; General information 382-5075 or 382-5076

CORPS OF ENGINEERS:

EIS No. 820741, Draft, COE, MO—Missouri R. Levee Unit L-385 Flood Control Project, Platte & Clay Counties, Due: 1/10/82.

Department of Interior:

EIS No. 820753, Final, NPS, SEV, CA, NV—Death Valley Nat'l Monument Natural/Cultural Resources Mgmt., Due: 12/27/82.

Department of Transportation:

EIS No. 820748, Draft, FHW, IN—US 12 Bridge Replacement Over Trail Creek, LaPorte County, Due: 1/10/83.

EIS No. 820749, Draft, FHW, OH—Ohio Turnpike (I-76/I-80/I-90) Upgrading, IN to PA States Lines, Due: 1/10/83.

EIS No. 820743, Final, FHW, LA—LA-14 Upgrading, LA-14 Bypass to LA-676, Vermillion & Iberia Parishes, Due: 12/27/82.

EIS No. 820746, Final, FHW, IN—Holt Road Improvement/Extension, I-79 to

Lafayette Road, Marion Co., Due: 12/27/82.

EIS No. 820745, Final, FAA, OR—Clackamas County Reliever Airport, Mulino, Clackamas County, Due: 12/27/82.

Environmental Protection Agency:

EIS No. 820742, Final, EPA, REG—Large Appliance Surface Coating Operations Emissions, Standards, Due: 12/27/82.

EIS No. 820747, Final, EPA, REG—Publication Rotogravure Printing, presses, Emissions, Standards, Due: 12/27/82.

EIS No. 820752, Final, EPA, MXG—Galveston Ocean Dredged Material Disposal Site, Designation, Due: 12/27/82.

Department of Housing and Urban Development:

EIS No. 820754, Draft, HUD, WY—Westborough Subdivision, Mortgage Ins., Rock Springs, Sweetwater Co., Due: 1/10/83.

Department of Agriculture:

EIS No. 820744, Final, SCS, NB—Swan Creek Watershed Plan, Saline and Jefferson Counties, Due: 12/27/82.

EIS No. 820751, Final, REA, NM—Fruitland Coal Load 230 NV Transmission Line—Adoption, Due: 12/27/82.

Nuclear Regulatory Commission:

EIS No. 820750, Final, NRC, REG—Land Disposal of Low-Level Radioactive Waste, Licensing, Due: 12/27/82.

Amended Notice:

EIS No. 810458, Final, SCS, NB—Swan Creek Watershed Plan, Saline and Jefferson Counties *Published FR 6/19/81—Officially withdrawn.

Dated: November 22, 1982.

Louis J. Cordie,

Acting Director, Office of Federal Activities.

[FR Doc. 82-32488 Filed 11-24-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

BC Docket No. 82-774; File No. BPCT-820526KI, BC Docket No. 82-775; File No. BPCT-820823KE]

Alvarez & Escabi et al.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: November 4, 1982.

Released: November 19, 1982.

In re application of Alvarez & Escabi, Mayaguez, Puerto Rico; Ana J. Plaza, Mayaguez, Puerto Rico; for construction permit; for a new television station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Alvarez & Escabi (A&E) and Ana J. Plaza (Plaza) for a new commercial television station to operate on Channel 22, Mayaguez, Puerto Rico.

2. A&E's response to question 1, Section II, F.C.C. Form 301, indicates that the applicant is an individual. The applicant's response to page 3, Section II, however, shows that J. J. Alvarez and Humberto Escabi each have a 50% interest in the applicant. Consequently, the legal status of the applicant is unclear. Accordingly, A&E will be required to submit an amendment clarifying the legal status to the Administrative Law Judge within 30 days of the release of this Order.

3. The material submitted by A&E in its application does not demonstrate the applicant's financial qualifications.¹ Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, A&E will be given 30 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary and, if appropriate, to

submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If A&E cannot make the required certification, it shall so notify the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket 82-378, released July 15, 1982.

4. There is a discrepancy between the azimuth of major lobes listed in Section V-C and the directional antenna pattern shown in Exhibit VC-2 of Plaza's application. Plaza will be required to submit the correct azimuth of major lobes to the Administrative Law Judge within 30 days of the release of this Order.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive television service of 64 dBu or greater intensity (Grade B), together with the availability of other primary television services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

Conclusion and Order

6. The applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, however, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

9. It is further ordered, that Alvarez & Escabi shall submit an amendment to their application correcting the discrepancy noted in paragraph two, above, to the Administrative Law Judge within 30 days of the release of this Order.

11. It is further ordered, that Alvarez & Escabi shall, within 30 days of the

release of this Order, submit a financial certification required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the required certification cannot be made.

12. It is further ordered, that Ana J. Plaza shall submit the required azimuth of major lobes, to correct the discrepancy noted in paragraph four, above, to the Administrative Law Judge within 30 days of the release of this Order.

13. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Laurence E. Harris,

Chief, Broadcast Bureau.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-32384 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-763; File No. BPCT-80111 4KG]

Elba Development Corp.; Designating Application for Hearing on Stated Issues

Adopted: November 3, 1982.

Released: November 18, 1982.

In re application of; Elba Development Corp., (KQTV (TV)), St. Joseph, Missouri, for a construction permit; for a major change.

1. The Commission, by the Chief, Broadcast Bureau, has before it for consideration the above-captioned application of Elba Development Corporation (Elba), licensee of television broadcast station KQTV, Channel 2, St. Joseph, Missouri, seeking to make major changes in the facilities of that station; and petitions to deny

¹ No bank letters or related documents were submitted to indicate the source of funds needed to construct and operate.

filed by (1) Scripps-Howard Broadcasting Co. (Scripps-Howard), licensee of KSHB-TV, Channel 41, Kansas City, Missouri; (2) The Hearst Corporation, licensee of KMBC-TV, Channel 9, Kansas City, Missouri; (3) Meredith Corporation (Meredith), licensee of KCMO-TV, Channel 5, Kansas City, Missouri; (4) Topeka Television, Inc. licensee of KSNT Channel 27, Topeka, Kansas; (5) Taft Broadcasting Co. (Taft), licensee of WDAF-TV, Channel 4, Kansas City, Missouri; and (6) Mid-America Broadcasting of Topeka, Inc. (Mid-America), permittee of Channel 49, Topeka, Kansas.

2. Each Petitioner Claims standing as a "party in interest" within the meaning of Section 309(d) of the Communications Act of 1934, as amended, on the grounds that the proposed new station would compete in the Topeka/Kansas City area for audience and revenues, inflicting economic injury on the Petitioners. The Commission finds that the petitioners have standing. *Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 393, 9 RR 2008 (1940).

Introduction

3. St. Joseph, Missouri, is located 50 miles north of Kansas City, Missouri. Elba currently transmits from a site 2.8 miles east of the St. Joseph reference point with an antenna height of 810 feet above average terrain and an effective radiated visual power (ERP) of 100 kW. Elba is proposing to move to a site 5.3 miles east of Potter, Kansas, which is approximately 26 miles southwest of the St. Joseph reference point. Elba is proposing to build a 2000 foot above ground tower at the proposed site with ERP of 100 kW. At the present time, KQTV provides no primary city service to Kansas City, Missouri, Kansas City, Kansas or Topeka, Kansas, nor is Grade A service provided to Kansas City or Topeka, Kansas. Elba states that its goal in filing the above-referenced application is to improve its facilities and to serve more people, while continuing to fulfill its primary obligation to St. Joseph, the city of license.

De Facto Reallocation¹

4. Generally, Petitioners contend that the Commission must determine whether the move would achieve a fair, efficient and equitable distribution of television service within the meaning of Section 307(b) of the Communications

Act of 1934, as amended. Specifically, Petitioners contend that grant of Elba's application would constitute the *de facto* reallocation of Channel 2 from St. Joseph to Topeka or Kansas City.² In support of this contention, Petitioners principally rely on *Communications Investment Corp. v. FCC*, 641 F. 2d 954 (D.C. Cir. 1981). Petitioners argue that Elba's proposal satisfies several of the key factors identified by the Court which have tended in the past to suggest to the Commission or the Court that a *de facto* reallocation issue must be ventilated in an evidentiary hearing before a transmitter relocation can be approved (id. at 968). The pertinent factors are: (1) The ratio of St. Joseph's population (72,691) to Kansas City, Kansas (168,000) and Kansas City, Missouri (507,000) combined is approximately one to eight; in the case of Topeka (125,011), the ratio is 1:1.7; (2) Elba is proposing to move its transmitter from a site 2.8 miles north of St. Joseph to a location that is 25.8 miles from St. Joseph; 33.8 miles from Kansas City, Missouri; 30.7 miles from Kansas City, Kansas and 42.3 miles from Topeka, Kansas; (3) KQTV's signal strength over St. Joseph will decline from 111 to 82 dBu, a 29 dBu reduction; (4) signal strength over Kansas City, Missouri will increase 21 dBu from 55 to 76 dBu; the KQTV signal strength at the Kansas City, Kansas reference point would increase 20 dBu from 58 to 78 dBu and the KQTV signal strength at the Topeka reference point would increase 25.5 dBu from 43.5 dBu to 69 dBu. Operating as proposed, the principal city contour of KQTV would include 68% of the area of Kansas City, Missouri and all of Kansas City, Kansas. The Grade A contour would include 93% of the area of Kansas City, Missouri, all of the area of Kansas City, Kansas and 85% of the area of Topeka, Kansas; (5) proposed relocation will create an unserved area of 5,805 persons in an area of 429 square miles. KQTV would provide a first television service to a population of approximately 6,000 people in an area of 418 square miles. A second television service would be provided to a population of 7,463 persons in an area of 413 square miles (6) there is a history of prior efforts by previous KQTV licensees and the present applicant to relocate closer to the Topeka/Kansas City market. Specifically, when the station was sold to Elba in October, 1979, Elba requested additional time to decide whether it wanted to resume prosecution of the

pending major change application of its predecessor. Subsequently, in June 1980, the Commission dismissed the pending application "in light of the age of the case and volume of papers which had been filed." Thereafter, Elba filed the instant application³; (7) there are no unique advantages to the site proposed by Elba, in that there are other sites to the north of St. Joseph that would accommodate a 2000 foot above ground tower and enable Elba to render better service to St. Joseph. Petitioners allege that, at the alternate site, the Grade B contour would cover an area of 20,106 square miles with a population of 1,187,603 persons; would provide first and second television service to 60,014 persons in an area of 2,564 square miles and 19,007 persons in an area of 1,324 square miles, respectively; no Grade A service to Kansas City, Kansas, Kansas City, Missouri or Topeka; there would be no overlap of KQTV primary city, Grade A or B contours with the principal city, Grade A or B contours of Mid-America, the permittee of Channel 49.

5. Elba responds that the population figures relied upon by the Petitioners are outdated. Elba contends that, according to 1980 census information, the population of St. Joseph is 76,691; the population of Topeka is 115,266; and the population of Kansas City, Missouri is 448,159. Elba further contends that, according to the above population figures, the ratio of the St. Joseph population to Kansas City, Missouri is 1:5.8 and St. Joseph to Topeka is 1:1.5, which, Elba claims, is less than any ratio found to be significant by the court in *CIC*. Elba argues that the methods used by Petitioners to measure the distance from transmitter site to the city of license and to the larger city are erroneous. Elba argues that the proper method of measuring distance is to use the official reference points adopted by the Commission in § 73.611 of the Commission's Rules. Using these points, Elba asserts that the distance between the proposed transmitter site and St. Joseph is 26.9 miles, the distance between the proposed transmitter site and Kansas City is 35.6 miles and the distance between the proposed transmitter site and Topeka is 40.4 miles. Thus, Elba states that the transmitter is closer to St. Joseph than to either Kansas City or Topeka. Elba

¹Since Petitioners raise similar arguments in their petitions, these and related pleadings will be considered jointly, unless otherwise indicated.

²On June 29, 1982, the Commission issued a *Notice of Proposed Rulemaking* in BC Docket No. 82-320, 47 FR 29282, (1982) reexamining its current *de facto* reallocation policy.

³By Commission letter dated June 12, 1980, the Chief, Broadcast Facilities Division, dismissed the major change application of Elba Development Corp. (BPCT-4473) citing, inter alia, the dated nature of the application and pleadings and the probable need for extensive amendment which the Commission felt would be tantamount to filing a new application.

contends that it proposes to place a stronger signal over the city of license than over either of the larger cities. Furthermore, Elba states that it intends to serve St. Joseph with a city grade signal and that there will be no loss area in the city of license. However, Elba concedes that outside the city of license, there will be a loss of 10,733 persons in an area of 903 square miles, which is approximately 52-64 miles northeast of St. Joseph. Therefore, Elba proposes to build translator stations in Bethany and Grant, Missouri, and gratuitously to supply and install rooftop antennas to those in the loss area to minimize the effect. Elba asserts that the resulting loss of service will be counterbalanced by the fact that the proposed service will provide a first television service to 5,556 persons in an area of 465 square miles. Regarding Elba's alleged prior interest in locating closer to a larger market, Elba argues that Petitioners have shown no evidence of Elba's prior interest in Kansas City or Topeka. Elba claims that it had no connection with applications filed by prior licensees of KQTV. Contrary to Petitioner's assertion, Elba contends that there is a unique advantage to the proposed site and that the alternative site proposed by the Petitioners is unsuitable. Elba further contends that, based on engineering data, the 50 square mile area around Potter, Kansas, within which the proposed site is located, is the only area within 35 miles to the south, east or west of St. Joseph where a tall tower could be built. Elba states that the alternative site is 27.2 miles further from its city of license and that it would only be able to serve 1.1 million people, 400,000 viewers less than it expects to serve from its proposed site. Lastly, Elba argues that the *de facto* reallocation policy is not invoked simply because a licensee proposes to improve its facilities and, as a result, to extend service to additional communities.

6. In response to Elba's opposition, Petitioners state that the measurements of the distance between the proposed transmitter site to the city of license and the larger city should be calculated from the proposed transmitter site to the boundary of each city and not to its reference point. Petitioners further state that if the city boundaries are utilized, the new site is closer to the boundaries of Kansas City than to the boundaries of St. Joseph. Petitioners further respond that Elba cannot utilize translators to compensate for the loss of primary service. Petitioners argue that translators may only be used to compensate for such loss where special circumstances exist such as terrain

obstructions, that are substantially beyond the control of the licensee. Petitioners disagree that there is a unique advantage to Elba's proposed transmitter site. Petitioners contend that there are sites to the north of St. Joseph where Elba could construct a tall tower and essentially maintain its current coverage of the St. Joseph area. Finally, Petitioners respond that Elba's prior interest in the present site can be established by a letter dated June 9, 1980, where Elba requested that the Commission consider the oldest of the proposals as its own.

7. "*De facto* reallocation requires that there be an element of removal of the channel from one city and an effective use in another city; there can be no reallocation if either element is missing." *Central Alabama Broadcasters, Inc.*, 68 FCC 2d 1339, 1340 (1978). A *De facto* reallocation of a channel occurs when an applicant seeks primarily to serve another community not eligible for the channel in question, depriving the assigned community of service from that channel. *Hall Broadcasting Co., Inc.*, 71 FCC 2d 235, 237 (1979). "So long as it appears that an applicant will provide service to the assigned community, additional service rendered by it to other communities does not result in a *de facto* reallocation." *Id.*

8. In *CIC, supra* the United States Court of Appeals reviewed and articulated nine key factors culled from prior Commission and court decisions on which the Commission has relied in determining whether or not a proposed transmitter move raises a question of *de facto* reallocation. The Court emphasized that it was not laying down a novel *per se* rule requiring the Commission to conduct full evidentiary hearings, only providing a framework from which the Commission traditionally requires a Section 309 hearing.

9. We have reviewed Elba's application and the pleadings in light of the factors discussed in *CIC* and conclude that Petitioners have failed to raise substantial and material questions of fact with respect to the *de facto* reallocation of channel 2 warranting an evidentiary hearing pursuant to Section 309 of the Communications Act. (1) The population ratio of St. Joseph to Kansas City, Missouri is 1:5.8 and the population ratio of St. Joseph to Topeka is 1:1.5.⁴ While the population ratio between St. Joseph and Kansas City, Missouri weigh in the petitioner's favor, the ratio between St. Joseph and Topeka is lower

than any ratio found to be significant in *CIC*. (2) Elba's proposed transmitter would be located closer to St. Joseph (26.9 miles), than to Topeka (40.4 miles) or Kansas City, Missouri (35.6 miles).⁵ These first two factors weigh in Elba's favor. (3) While Elba's proposed transmitter site will increase KQTV's signal strength over Topeka and Kansas City, Kansas, KQTV will continue to place a city grade signal over all of St. Joseph in accordance with § 73.685(a) of the Commission's Rules. (4) as a result of the proposed move, Elba will create a loss area. See discussion below. (5) Elba has demonstrated no prior interest in relocating to the Topeka/Kansas City market. The evidence presented by the Petitioners relates specifically to the alleged efforts of the past licensees of KQTV to relocate to the larger market. Any effect of Elba's June 8, 1980 correspondence to the Commission is inconsequential to the instant proceeding, since no determination was ever made on the intent of the 1971 "tall tower" application and its possible *de facto* reallocation implications. We cannot attribute to Elba past attempts of its predecessors to allegedly penetrate the Topeka/Kansas City market. (6) Elba's proposed transmitter site is not currently located in an area used by Kansas City or Topeka stations. (7) The studios of KQTV will remain in St. Joseph. (8) The question of whether the proposed site offers any unique advantages to Elba is disputed by the Petitioners. However, there is no requirement that Elba make this showing. The Court in *CIC* noted that an applicant might offer a showing that would sufficiently explain a proposed transmitter location, but that " * * * a required showing will rarely be possible, however, because it will be necessary for the proposing station to demonstrate that no other site closer to the primary market will do; showing a negative beyond dispute is not often easy." *CIC* at 970. In conclusion, we do not find that Elba's proposed operation would constitute a *de facto* reallocation of Channel 2 from St. Joseph.

Unserved Area

10. It is an undisputed principle that the loss of service to an area is *prima facie* against the public interest, absent a substantial showing of offsetting factors, *Hall v. Federal Communications*

⁴ According to the most recent population figures available, i.e., the 1980 Census.

⁵ We agree with the applicant that the proper method of measuring distance is to use the official reference points adopted in § 73.611 of the Commission's Rules. Due to the irregular and inconsistent nature of official city limits, such an inexact source of measurement is not contemplated by the Rules.

Commission, 237 F.2d 567 (D.C. Cir. 1956). Moreover, the weighing process in which we engage to determine whether the projected loss of service will be counterbalanced by other factors involves more than a mere comparison of numbers. *KQTV, Inc.*, FCC 79-607, released October 17, 1979. As noted above, KQTV's proposed relocation would create an unserved area of 5,805 persons in an area of 429 square miles. Elba relies upon the elimination of an unserved area (KQTV would provide a first TV Service to 5,934 persons in an area of 418 square miles) and argues that translators and rooftop antennas can be used to minimize the loss of service to the public, as offsetting factors. However, in KQTV we affirmed our long standing policy that translators cannot compensate for the loss of primary service. In the Commission's view: "The loss of service and, clearly, the creation of an unserved area are serious matters, particularly to those viewers who will suffer the loss." *KQTV, Inc.*, *supra* at 7.

11. On the basis of the facts presently available, the Commission is not persuaded that the creation of an unserved area is offset by other factors. Surely the fact that the unserved area being created is nearly identical in size and population to that being eliminated does not constitute a substantial offsetting factor, particularly in light of the fact that there would be additional loss areas. If the deprivation of all predicted television service in an area is to be justified in this case, it must be done in the context of an evidentiary hearing where all factors can be subjected to the close scrutiny they deserve. The application will, therefore, be designated for hearings on appropriate issues related to the gains and losses.

UHF Impact

12. Petitioners contend that a grant of Elba's application would have an adverse effect on existing and prospective UHF stations in both Topeka and Kansas City. As already shown, a construction permit was recently awarded for authority to operate on Channel 49 in Topeka, Kansas. Petitioners contend that Elba's proposal entails the substantial overlap of KQTV contours and the city, Grade A and Grade B contours of the permittee of Channel 49. Petitioners state that the Topeka area is presently being served by NBC affiliate KTSB (Channel 27) and CBS affiliate WIBW (Channel 13). Presently, ABC programming is also provided on a per program basis by KTSB; there is no fulltime ABC affiliate. Petitioners contend that Channel 49's viability will be achieved only with a

major network affiliation (presumably ABC). Petitioners argue that since KQTV is already an ABC affiliate and would continue to provide ABC programming to the Topeka area, ABC will not be inclined to offer affiliation to a second station in the same community. Petitioners argue that, as a new independent UHF station, Channel 49's chances of viability are minimal.

13. Elba responds that Petitioners have failed to demonstrate that Elba's site change will harm the existing or proposed UHF stations in Kansas City or Topeka. Elba further argues that no showing has been made with regard to Channel 49's viability as an independent station or as a subscription television station, nor have Petitioners presented economic evidence on the Topeka market or data concerning projected audience shares and advertising revenues. Elba argues that, based on market research performed by the consulting firm of Frazier, Gross and Kadlec (FGK), even with the improvement in KQTV's facilities, a new affiliate on Channel 49 can attract in excess of 5,000 prime time homes per average quarter hour, thereby meeting the criteria for an affiliation with ABC.

14. Petitioners restate their assertion that Channel 49 would be ineligible for a network affiliation, if KQTV's application were granted. In further support of their position, Petitioners retained the services of Cooper and Associates to review the FGK statement submitted by Elba. Cooper concluded that the study prepared by FGK was seriously flawed. Cooper further concluded that if the KQTV request is granted and if KQTV remains an ABC affiliate, Shawnee County would then be receiving adequate ABC service (the unduplicated net weekly circulation of KQTV and KMBC-TV would exceed 70%), thereby disqualifying the new Topeka UHF station for consideration as an ABC affiliate.

15. Traditionally, the new or increased penetration of a VHF signal into a UHF service area forms the basis of a UHF impact issue. *Triangle Publications Inc.*, 29 FCC 315 (1960), aff'd 291 F.2d 324 (1961). However, in *WFMY Television Corp.*, 59 FCC 2d 1010 (1976), the Commission announced that it was restructuring its approach to UHF impact hearing cases. To require designation of an application for hearing, the party raising the question must first bear the burden of proving that there is a near-term potential for activation of the vacant channel. The Commission further stated that a petitioner must "demonstrate some nexus between the fact of extended

VHF service and claimed specific adverse consequences to the public interest." *Id.* at 1012-13. In addition, the petitioner "must set forth facts sufficient to support a *prima facie* determination that a grant of the VHF application would be inconsistent with the public interest." 47 U.S.C. 309(d). *Id.* at 1012.

16. The question regarding the near term potential for activation of Channel 49 has been rendered moot by the recent grant of a construction permit for that channel. Although engineering data has been submitted which shows that Elba's proposal, if granted, will result in increased contour overlap with Mid-America's facilities, we agree that these showings are not themselves persuasive due to the proximity of St. Joseph, Kansas City and Topeka. Consequently, as noted by the applicant, the Topeka market presently receives at least primary or secondary service from five television stations; in addition, several other services are available via CATV.

17. While the parties have gone to considerable lengths to support their respective positions regarding the effect of KQTV's application on Mid-America's ability to qualify for consideration as a primary affiliate of ABC, Petitioners have failed to demonstrate some nexus between Elba's proposal and claimed specific adverse consequence to the public interest. *KTVO Inc.*, 47 FCC 2d 914, 915 (1974). See generally, *WLVA, Inc. v. FCC*, 459 F.2d 1298-99 (1972). While the availability of a network affiliation may have a direct bearing on an individual licensee's ability to compete effectively in a given market, as a general rule, the Commission has no role in deciding who will carry network service. The Commission's role is to protect the public, not to protect the licensee against competition. *FCC v. Sanders Brothers Radio Station*, *supra*. Therefore, the question here is whether the public interest will be adversely affected if Mid-America is unable to obtain ABC network affiliation. Under the present circumstances, we believe that Topeka is receiving adequate network service from established UHF and VHF stations. In addition, it is not enough for Petitioners to generally state that if KQTV operates as proposed, it would increase its coverage of the Kansas City and Topeka retail trading zones, without showing how this will harm the existing or proposed UHF stations in Kansas City or Topeka.

18. In summary, we cannot conclude that sufficient data has been furnished by the Petitioners to support a *prima facie* determination that a grant would be inconsistent with the public interest.

47 U.S.C. 309(d). Accordingly, no UHF impact issue will be specified.

Environmental ⁶

19. Generally, Meredith contends that Elba's narrative statement neither conforms to the Commission's Rules nor to the National Environmental Policy Act of 1969, (42 U.S.C. 4321) (NEPA) and should therefore be dismissed.⁷ Meredith alleges that the information submitted by Elba is not factual, but argumentative and conclusory; that there is no adequate description of the facilities; that the statement does not mention the tower's relation to natural flyways for birds; no attempt has been made to identify impacts of construction or of any continuing pattern of human intrusion into the area upon species of plants and animals not specially listed on the endangered species list; the statement is not a sufficient description of the environment surrounding the tower, nor is it a sufficient narrative of the impacts of the project; the statement fails to propose and to consider the impact of alternatives to the KQTV proposal as mandated by the language of NEPA, 42 U.S.C. 4332(2)(c)(iii)(1976), *Natural Resources Defense Council v. Morton*, 337 F. Supp. 165 (1971), *Calvert Cliffs Coordinating Committee v. AEC*, 146 U.S. App. D.C. 33, 449 F.2d 1109 (1971).

20. Meredith further contends that because the Commission had no part in the preparation of the environmental narrative statement, the Commission cannot accept it. Meredith, however, has confused the environmental narrative statement with an environmental impact statement. The former is required of an applicant proposing a major environmental action as defined by § 1.1311 of the Commission's Rules; the latter is required of the agency only where significant adverse environmental effects are perceived. They are two entirely separate actions, the latter being required only where the former raises a substantial environmental question. The cases which Meredith has cited are not relevant; they deal with situations where adverse environmental effects were perceived by the agency and an environmental impact statement was issued by the agency. The question

raised by the cases was whether the EIS issued by the agency met the requirements of the NEPA.

21. Elba has described the proposed facilities, site and surrounding area. Elba has discussed considerations which led to the selection of the site and states that local, State and Federal authorities were consulted on matters relating to the environmental effect. Under the present circumstances, Elba is not required to make any further showing regarding potential adverse effects on the environment since it has not shown that "any feature of the site or route has special environmental significance." [§ 1.1311(5)(b)]. Therefore, the narrative statement submitted by Elba does conform with the Commission's Rules and the mandates of NEPA.

Candor

22. Meredith alleges that Elba has been lacking in candor in its dealings with the Commission because it did not mention the instant major change application in a previously filed Cable Special Relief Petition, which sought relief from the duplicated network programming of the Petitioner's station in Elba's home county.

23. The failure to disclose the filing of an application with the Commission may be a violation of the applicant's obligations under 1.65, but not concealment or lack of candor. The agency must be presumed to know what has been filed with it. Moreover, it is illogical to ask the agency to hold that an applicant's failure to tell the agency in one proceeding about a pending matter before the same agency necessarily constitutes deception or lack of candor. Thus, no issue will be specified.

Conclusion and Order

24. For the reasons stated, we find that substantial and material questions of fact have been raised by Petitioner's herein regarding gains and losses. Except with respect to the issues specified below, we find that the applicant is qualified to construct and operate as proposed. We are, however, unable to make the statutory finding that grant of the application would serve the public interest, convenience and necessity and we are of the opinion, therefore, that the application must be designated for hearing.

25. Accordingly, it is ordered, That the petitions to deny filed herein, are granted to the extent indicated and otherwise are denied, and pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-

captioned application of Elba Development Corporation is designated for hearing at a time and place and before an Administration Law Judge to be specified in a subsequent Order, upon the following issues:

(1) To determine what areas and populations would gain or lose service if the application were granted, and what other television services of at least Grade B level are available to those areas and populations;

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether, pursuant to Section 307(b) of the Communications Act of 1934, as amended, a grant of the application would provide a fair, efficient and equitable distribution of radio service; and

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the application should be granted.

26. It is further ordered, that Scripps-Howard Broadcasting Co., licensee of KSHB-TV, Kansas City, Missouri; The Hearst Corporation licensee of KMBC-TV, Kansas City, Missouri; Meredith Corporation, licensee of KCMO-TV Kansas City, Missouri; Topeka Television, Inc. licensee of KSNT, Topeka, Kansas; Taft Broadcasting Co., licensee of WDAF-TV, Kansas City, Missouri; and Mid-America Broadcasting of Topeka, permittee of Channel 9, Topeka, Kansas, are made parties respondent in this proceeding.

27. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.221(c) of the Commission's Rules in person or by attorney, within twenty (20) days of the mailing of this Order, shall file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

28. It is further ordered, that the applicant herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(d) of the Rules.

Federal Communications Commission.

Larry D. Eads,
Chief, Broadcast Facilities Division,
Broadcast Bureau.

[FR Doc. 82-32385 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

⁶Meredith was the only petitioner to raise environmental and lack of candor arguments against the applicant.

⁷Construction of communications facilities which specify antenna towers or supporting structures which exceed 300 feet in height are considered major actions within the meaning of NEPA. Section 1.1305(2) of the Commission's Rules.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

On November 8, 1982 the Federal Communications Commission submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of this submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 321 NEOB, 726 Jackson Place, NW., Washington, D.C. 20503.

Title: Supplemental Information 72-76 MHz—Operational Fixed Stations
Form No.: FCC 1068-A
Action: New Submission
Respondents: Individuals, associations, partnerships, corporations and local governmental entities applying for operational fixed Private Land Mobile stations in the 72-76 MHz frequency band.
Estimated Annual Burden: 300 Responses: 150 Hours.

The collection of this data is necessary for the Commission to ensure protection to Television Channels 4 and 5 from harmful interference. Specific criteria covered are contained in FCC Rules and Regulations, § 90.257.

November 18, 1982.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 82-32386 Filed 11-24-82; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Annual Systems of Records; Deletion of System of Records; and Proposed New Routine Uses to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Annual notice of Privacy Act systems of records; deletion of system of records; and proposed new routine uses to existing systems of records.

SUMMARY: The purpose of this notice is to meet the requirement of the Privacy Act of 1974 regarding the annual publication of an agency's notices of systems of records, and give notice of the deletion of a system of records and the proposed new routine uses to be added to existing systems of records entitled, "FEMA/FIA-2, National Flood

Insurance Application and Related Documents Files" and "FEMA/NPP-1, National Defense Executive Reserve System."

EFFECTIVE DATE: Except for the new routine uses being added to the FEMA/FIA-2 and FEMA/NPP-1, all other changes are effective on the date of publication in the *Federal Register*. The new routine uses will become effective, without further notice, on 30 days from the date of this notice in the *Federal Register*, unless comments necessitate otherwise.

ADDRESS: Written comments may be sent or delivered to Rules Docket Clerk, Federal Emergency Management Agency, (Room 835), 500 C Street, S.W., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287-0313.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency last published its notices of systems of records in their entirety on October 7, 1981 (46 FR 49726). Since that time, a new system of records entitled, "FEMA/RMA-10, Claims Collection Files" was proposed on August 13, 1982 (47 FR 35338) which became effective on October 12, 1982.

In an effort to economize on the cost of publication in the *Federal Register*, we are publishing only those systems of records notices which have changes. Where no changes have occurred, the notice is referenced by identification symbol, title, and citation within the *Federal Register* where the full text of the notice appeared in the October 7, 1981, publication.

None of the changes to the system notice being identified in this notice are considered substantial alterations of the systems and, therefore, do not require a "Report on New Systems." The only system changes which are subject to a public comment period are the FEMA/FIA-2 and FEMA/NPP-1 which include new routine uses. All other changes become effective immediately.

A brief description of changes (including new routine uses) follows:

FEMA/RMA-6, Security Management System. This system of records' location and system manager section has been changed to reflect a reassignment to security Policy, Office of Executive Administration. Also, the identification number, FEMA/RMA-6 has been changed to FEMA/SEC-1.

As a result of the redesignation of the identification number of FEMA/RMA-6, the systems FEMA/RMA-7 through FEMA/RMA-10 have been redesignated as follows:

FEMA/RMA-6, Emergency Assignment System (previously was FEMA/RMA-7).

FEMA/RMA-7, Key Personnel Central Locator List (previously was FEMA/RMA-8).

FEMA/RMA-8, Grievance Records (previously was FEMA/RMA-9).

FEMA/RMA-9, Claims Collection Files (previously was FEMA/RMA-10).

FEMA/NETC-1, Student Application and Registration Records, National Fire Academy. The title of the Associate Director was inadvertently omitted in past publication and is being added.

FEMA/NETC-2, National Fire Academy Instructor Records. The title of the Associate Director was inadvertently omitted in the past publication and is being added.

FEMA/NETC-3, Student Academic and Course Records. The title of the Associate Director was inadvertently omitted in past publication and is being added.

FEMA/NETC-4, Home Study Courses. The title of the Associate Director was inadvertently omitted in past publication and is being added.

FEMA/FA-1, Federal Employees with Fire Related Expertise. As a result of a reassignment of functions, the system location and system manager sections have been changed. The system has also been redesignated as "FEMA/NETC-5, Federal Employees with Fire Related Expertise."

FEMA/FA-2, President's and Secretary's Award Nominees. As a result of a reassignment of functions, the system location and system manager sections have been changed. The system has also been redesignated as "FEMA/NETC-6, President's and Secretary's Award Nominees".

FEMA/FIA-2, National Flood Insurance Application and Related Documents Files. This system of records includes two new routine uses. The routine use section has also been redrafted to incorporate sections of the routine uses that fall within the program area of the Federal Insurance Administrator and those routine uses that fall within the program area of the Office of the Associate Director, Office of State and Local Programs and Support. The responsibilities for Section 1362 of the National Flood Insurance Act of 1973, as amended, and flood plain management fall within the Office of State and Local Programs and Support and have been so identified in the routine use section since the Federal Insurance Administrator would not release any information to a "routine user" for purposes of carrying out Section 1362 or flood plain management

activities without the review and approval of the "routine use" request by the Associate Director, Office of State and Local Programs and Support. The new routine uses provide release "to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such States and local governments might reasonably expect to assume in the event of a flooding disaster and to further the flood insurance marketing activities of the National Flood Insurance Program;" "and, upon the approval by the Associate Director, Office of State and Local Programs and Support, that the use is in furtherance of the flood plain management and hazard mitigation goals of the Agency, to State and local government agencies and municipalities to review National Flood Insurance policy and claim files to assist them in hazard mitigation and flood plain management measures duly adopted by the community."

Both of the proposed routine uses are consistent with the purposes for which the information was collected and would provide the State and local governments with information necessary to permit them to become more self sufficient in carrying out their responsibilities under the National Flood Insurance Program and serve as well to cut down on Federal Government costs.

The FEMA/FIA-2 system of records notice is being reprinted in its entirety and the changes to the routine use section are in italics.

FEMA/SUP-1, Operating Personnel Folder Files. This system of records is being deleted since the files are covered by the OPM/GOV'T-1, General Personnel Records. The OPM/GOV'T-1 system of records covers not only the Official Personnel Folders in the Office of Personnel but also, where agencies determine that duplicates of the records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by the system. The Office of Personnel Management also included that it is not intended to limit this government-wide system of records to only the Official Personnel Folders. Records may be filed in other folders which are located in Offices other than where the Official Personnel Folder is located. Some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system. Accordingly, we

have determined that a FEMA internal system is a duplicate of the government-wide system of records and is not needed. Accordingly, FEMA/SUP-1 is deleted. Since the FEMA/SUP-1 system of records also included exempt subsections of the Privacy Act, the FEMA Privacy Act Regulations, 44 CFR 6.87 will be amended to reflect deletion of this system.

FEMA/NPP-1, National Defense Executive Reserve System. The routine use section of this system is being revised since internal uses of the information do not need to be included in the routine use section. The FEMA/NPP-1 system of records already includes routine uses 3, 5 and 8 of Appendix A. By this notice, the Federal Emergency Management Agency is proposing that routine uses 1 and 2 of Appendix A be added to this system of records.

FEMA/SLPS-4, FEMA Form 95-3, Application for Enrollment in Architect Engineering Professional Development Program. Because of FEMA form may change numbers, we do not believe it appropriate to include the form number. Accordingly, the title is being redesignated as "FEMA/SLPS-4, Application for Enrollment in Architect Engineering Professional Development Program. Also, under the Record Source Categories heading, the FEMA Form 95-3 is being deleted and identified as application submitted by applicants.

FEMA/SLPS-5, FEMA Summer Shelter Survey Program. This system is being revised under Record Source Categories heading to delete reference to FEMA form numbers.

FEMA/SLPS-6, Program Management Information System. This system is being revised under Record Source Categories heading to delete reference to FEMA form number.

FEMA/SLPS-11, Interagency Directories System. This system is being revised to include new system locations and system managers.

Section 3(b) of the Privacy Act itself permits additional disclosures of information from a system of records without the consent of the subject individual as follows:

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their official duties;

(2) Required to be released under the freedom of Information Act (an agency must balance the public interests in knowing the information versus the individuals expected right to privacy);

(3) For a routine use (as described in the routine use section of each specific system notice;

(4) To the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his/her designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

We are publishing Appendix A, which is a listing of routine uses which have been identified as being applicable to more than one system of records (see each routine use section to determine the routine uses applicable to a particular system), and Appendix AA which lists the addresses of our ten Regional offices.

Readers who notice any inadvertent errors or omissions in the systems of records notices are invited to bring them to the attention of: Linda Keener, FOIA/Privacy Act Officer, Federal Emergency Management Agency, Room 806, 500 C Street, S.W., Washington, D.C. 20472, or telephone (202) 287-0313.

Dated: November 16, 1982.

James Holton, Director,
Office of Public Affairs, Federal Emergency Agency.

FEMA Systems of Records:

FEMA/RMA-1, Payroll and leave accounting (46 FR 49727).
FEMA/RMA-2, Travel and Transportation Accounting (46 FR 49728).
FEMA/RMA-3, Committee Management Files (46 FR 49729).
FEMA/RMA-4, Central Files (46 FR 49729).
FEMA/RMA-5, Office Services File System (46 FR 49730).
FEMA/RMA-6, Emergency Assignment System (previously was FEMA/RMA-7).
FEMA/RMA-7, Key Personnel Central Locator List (previously was FEMA/RMA-8).
FEMA/RMA-8, Grievance Records (previously was FEMA/RMA-9).
FEMA/RMA-9, Claims Collection Files (previously was FEMA/RMA-10).
FEMA/NETC-1, Student Application and Registration Records, National Fire Academy.
FEMA/NETC-2, National Fire Academy Instructor Records.
FEMA/NETC-3, Student Academic and Course Records.
FEMA/NETC-4, Home Study Courses.
FEMA/NETC-5, Federal Employees with Fire Related Expertise (previously FEMA/FA-1).
FEMA/NETC-6, President's and Secretary's Award Nominees (previously FEMA/FA-2).
FEMA/COM-1, List of Custodians of Decision Information Systems (DIDS) Radio Receivers (46 FR 49738).
FEMA/EO-1, Equal Employment Opportunity Complaints of Discrimination Files (46 FR 49739).
FEMA/FIA-1, Federal Crime Insurance Program (46 FR 49740).
FEMA/FIA-2, National Flood Insurance Application and Related Documents Files.
FEMA/GC-1, Claims (litigation) (46 FR 49471).
FEMA/GC-2, FEMA Enforcement (Compliance) (46 FR 49472).
FEMA/IG-1, General Investigative Files (46 FR 49743).
FEMA/PA-1, Biographies (46 FR 49744).
FEMA/REG-1, State and Local Civil Preparedness Instructional Program (46 FR 49745).
FEMA/SEC-1, Security Management System (previously FEMA/RMA-6).
FEMA/GOV'T-1, Uniform Identification System for Federal Employees Performing Essential Duties During Emergencies (46 FR 49746).
FEMA/NPP-1, National Defense Executive Reserve System.
FEMA/NPP-2, Resource Interruption Monitoring System (46 FR 49748).
FEMA/NPP-3, Industrial Group Consultation (46 FR 49748).
FEMA/SLPS-1, Disaster Recovery Assistance Files (46 FR 49749).
FEMA/SLPS-2, Temporary Housing Files (46 FR 49749).
FEMA/SLPS-3, Disaster Assistance Personnel Reserve Files (46 FR 49750).

FEMA/SLPS-4, Application for Enrollment in Architect Engineering Professional Development Program.
FEMA/SLPS-5, FEMA Summer Shelter Survey Program.
FEMA/SLPS-6, Program Management Information System.
FEMA/SLPS-7, Military Reserve Program (46 FR 49753).
FEMA/SLPS-8, Radioactive Materials Inventory (46 FR 49754).
FEMA/SLPS-9, Maintenance and Calibration (46 FR 49755).
FEMA/SLPS-10, Radiation Exposure and Radioactive Materials; Radiation Committee Records (46 FR 49755).
FEMA/SLPS-11, Interagency Directories Systems.

FEMA/RMA-6

SYSTEM NAME:

Emergency Assignment System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of Resource Management and Administration, Washington, D.C. 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Emergency assignees to the FEMA Special Facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data, social security number, personal data, skills inventory, assignment information, badge number, and other related information for the purpose of in-house official use, based upon a need-to-know requirement, to assist officials charged with emergency responsibilities in the assignment and coordination of activities in the Western Virginia Operation Division of FEMA. Authority for maintenance of the system: Executive Order 12148.

PURPOSES:

To assist officials charged with emergency responsibilities in the assignment and coordination of activities in the Western Virginia Operations Division of FEMA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To provide the names, addresses and telephone numbers of FEMA subscribers having essential emergency functions to the General Services Administration for forwarding to the public telephone companies to designate those subscriber's home numbers as "essential" for the purpose of providing a minimum of delay in placing calls from their residences during a national disaster or civil emergency.

To assist officials charged with emergency responsibilities in the assignment and coordination of activities in the Western Virginia Operations Division of FEMA.

Additional routine uses may include Nos. 1, 2, 3, 5, and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mag-tape, drum, disc and paper.

RETRIEVABILITY:

By name, personal characteristics or skills, badge number, and agency.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; paper records in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retention of records shall be for duration of assignment. Disposition of records shall be in accordance with the FEMA Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and

concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

The individuals to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/RMA-7

SYSTEM NAME:

Key Personnel Central Locator List.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of Resource Management and Administration, Washington, D.C. 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected Key FEMA Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files and related documents contain lists of key FEMA officials with their home telephone numbers, office telephone numbers, and itinerary who may be contacted in the event of a national disaster or civil emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12148, 44 FR 43239.

PURPOSE(S):

For the purpose of locating selected Key FEMA Personnel in the event of a national disaster or civil emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide the names, addresses and telephone numbers of FEMA subscribers having essential emergency functions to the General Services Administration for forwarding to the public telephone companies to designate those subscriber's home numbers as "essential" for the purpose of providing a minimum of delay in placing calls from their residences during a national disaster or civil emergency.

In the event of a national disaster or civil emergency which requires action by FEMA, the list will be referred to in order to locate selected Key Officials.

Additional routine uses may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Paper records in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are destroyed on a monthly basis.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Telephone numbers and itineraries are furnished by the individuals on the list via telephone on a weekly basis.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/RMA-8

SYSTEM NAME:

Grievance Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of Resource Management and Administration, Washington, D.C. 20472; and classified location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees who have submitted grievances with FEMA in accordance with Part 771 of the Office of Personnel Management regulations (5 CFR Part 771), or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under Part 771 of the Office of Personnel Management regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievances and arbitration systems that FEMA may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954-58 Comp., p218, E.O. 10987, 3 CFR 1959-1963 Comp., p519, agency employees for personnel relief in a matter of concern or dissatisfaction which is subject to the control of FEMA management.

PURPOSE:

For the purpose of processing grievance complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested; to disclose information to another Federal agency or to a court when the Government is a party to a judicial proceeding before the court; in the production of summary descriptive

statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data included individually identifiable by inference; to disclosure information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties; to disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding; and to provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

Additional routine uses may include Nos. 1, 2, 5, and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

By name of the individual.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some

acceptable identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by (1) the individual on whom the record is maintained; (2) testimony of witnesses; (3) from related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/RMA-9

SYSTEM NAME:

Claims Collection Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system is located in the Office of Comptroller, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. Secondary systems will be maintained by the Claims Collection Officers designated for the following offices: Federal Insurance Administration, National Preparedness Programs, State and Local Programs and Support, National Emergency Training Center, U.S. Fire Administration, and each FEMA Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to FEMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Claims Collection Officers' file will contain the name and address of the debtor, amount of claim or delinquent amount; basis of claim; date claim arose; office referring claim to the Claims Collection Officer; record of each collection made; credit report or

financial statement reflecting the net worth of the debtor; date by which the claim must be referred to the Agency Collections Officer for further collection action; citation of basis on which claim was terminated or compromised; and the appropriation number under which the Accounts/Notes Receivable was established.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 951-953 (Federal Claims Collection Act of 1966), Pub. L. 90-616, and Pub. L. 92-453.

PURPOSE(S):

Information is used for the purpose of collecting monies owed FEMA arising out of any administrative or program activities or services administered by FEMA. The Claims Collection Officers' file represents the basis for the claim and amount of claim and actions taken by FEMA to collect the monies owed under the claim. The credit report or financial statement provides an understanding of the individual's financial condition with respect to requests for deferment of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

When debts are uncollectable, copies of the FEMA Claims Collection Officers' file regarding the claim and actions taken to attempt to collect the monies is forwarded to the U.S. General Accounting Office, Department of Justice, or a United States Attorney for further collection action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on lists and forms, and in computer processible storage media.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Personnel screening; hardware and software computer security measures. Paper records are retained in a locked container and/or locked room. Records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

The file on each claim on which administrative collection action has

been completed shall be retained by Claims Collection Officers' respective program office not less than one year after the applicable statute of limitations has run out. The file is then transferred to the National Archives and Records Service for a period of six years and three months after the end of the fiscal year in which the claim was closed out by means of the claim being paid, terminated, compromised, or the statute of limitations had run out.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. 20472. Notification procedure: Individuals wishing to inquire whether this system of records contains information about them should contact the system manager identified above.

RECORDS ACCESS PROCEDURE:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORDS SOURCE CATEGORIES:

Directly from the debtor, the initial loan application, credit report from the commercial credit bureau, administrative or program offices within FEMA, or other Federal, State, or local agencies which are involved in programs or services administered by FEMA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/NETC/1

SYSTEM NAME:

Student Application and Registration Records, National Fire Academy.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, National Emergency Training Center, Emmitsburg, Maryland 21727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and former applicants for admission to the courses and programs of the National Fire Academy and students registered for Academy courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include application forms and other information submitted by the applicants. Information collected includes, but is not limited to, name, sex, date of birth, education level, home address and job title. Files concerning students registered for Academy courses include the above information in addition to the next of kin (in case of emergency), home and/or business address, name or course, number of course credits, and grade, if any, and medical information in case of student injury or illness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93-498; Federal Fire Prevention and Control Act of 1974; 15 U.S.C. 2206; 5 U.S.C. 301; E.O. 12127, 44 FR 19367; and Reorganization Plan No. 3 of 1978, 43 FR 431943.

PURPOSE(S):

For the purpose of determining eligibility and effectiveness of Academy courses and to maintain necessary student records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine eligibility for participation in the courses and programs of the National Fire Academy; to supply students with information of courses, credits and grades; supplying Academy Registrar with record of student enrollment in Academy courses by geographic location; assessing use of course material in the field; and assessing the impact of course material on the community; to Members of the Board of Visitors for the purpose of advisory at the state and evaluating the participants evaluation of courses; to provide medical assistance to students who become ill or are injured during courses.

Additional routine uses may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on microfilm, paper and computer.

RETRIEVABILITY:

By name of the applicant.

SAFEGUARDS:

Personnel screening; hardware and software computer security measures. Paper records are retained in a locked container and/or room. Records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Paper records are retained for 1 year, then transferred to microfilm for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Emergency Management Agency, Associate Director for Training and Education, National Emergency Training Center, Emmitsburg, Maryland 21727.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification card, or other identification data

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Subject individuals, applicant employers, educational institutions recommendations and instructors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/NETC/2**SYSTEM NAME:**

National Fire Academy Instructor Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, National Emergency Training Center, Emmitsburg, Maryland 21727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals teaching Academy courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Instructor's name; home and/or business addresses and telephone numbers; titles of courses taught; dates and locations of courses; and evaluations of courses and instructors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Fire Prevention and Control Act of 1974; 15 U.S.C. 2201, et seq.; 5 U.S.C. 301 and 3109; E.O. 12127, 44 FR 19367; and Reorganization Plan No. 3 of 1978, 43 FR 41943.

PURPOSE(S):

For the purpose of selecting emergency replacement instructors and providing instructors with lists of courses and students taught.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintaining a list of instructors selecting emergency replacement instructors; providing instructors with lists of courses and students taught. The Fire Administration will also use student evaluations of instructors to help determine effectiveness of courses taught. These evaluations will be anonymous. Student evaluations will be a consideration in the rehiring of an instructor.

Additional routine uses may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Magnetic storage media; and temporary paper records, which exist only until data is automated.

RETRIEVABILITY:

Filed according to the surname of the Instructor.

SAFEGUARDS:

Personnel screening; hardware and software computer security measures.

Paper records are retained in a locked container and/or room. Records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Paper records are retained until information can be automated. Automated data is retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Emergency Management Agency, Associate Director for Training and Education, National Emergency Training Center, Emmitsburg, Maryland 21727.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Instructors and students.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/NETC/3**SYSTEM NAME:**

Student Academic and Course Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, National Emergency Training Center, Emmitsburg, Maryland 21727. All Regional offices, Computer Center, Olney, Maryland. Addresses of the Regional Directors of FEMA are listed in Appendix AA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any citizen who applies for and completes resident and field emergency management training conducted under the auspices of the National Emergency Training Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains student application records—FEMA 95-2, containing name, address, educational level, emergency management courses taken and where, emergency management organization and program affiliation, emergency management title, emergency management telephone number and length of emergency management service, employer, business title and business telephone number, student travel authorization and voucher for partial expense and date and location of course; individual training records; individual and business file for National Emergency Training Center Catalogs, Information Bulletins, etc.; Career Development Individual files; photographs with identification; MOBDES training files; Career Development directory; Student Expense files; completed Grant-in-aid forms; State recommendations, attendance and progress reports, student locators, and related academic documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 50 U.S.C. App. 2253, 2281; Reorganization Plan No. 3 of 1978, 43 FR 41943; and E.O. 12148, 44 FR 43239.

PURPOSE(S):

For the purpose of monitoring and reporting statistics on training courses in emergency management and determine who has or has not been trained in emergency management courses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

National Emergency Training Center to maintain individual training records; to compile regional, State, headquarters, military training data for administrative purposes such as budget requirements, replies to congressional inquiries, internal reporting and performance statistics, Program reports, and

transmittals of satisfactory course completion of State and local governments.

Regions—to maintain up-to-date statistics of National Emergency Training Center graduates assigned to regional jurisdictions and to inform States and local governments.

States—to maintain up-to-date statistics of National Emergency Training Center graduates assigned to State and local jurisdictions.

Headquarters, Office of Resource Management and Administration to record and obligate funds for students attending National Emergency Training Center courses and forward records to FEMA Office of Resource Management and Administration for payment purposes.

Computer Center—to prepare ADP documents relating to student participation.

Other routine uses may include Nos. 2, 3, 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and 3 x 5 index cards.

RETRIEVABILITY:

3 x 5 locator cards files alphabetically by name; academic records filed chronologically by course title; and travel authorizations and vouchers filed by fiscal year and State.

SAFEGUARDS:

Records are retained in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are considered permanent. Course folders retained in active file until course is completed, held 20 years in inactive file and subsequently transferred to Records Center, destroyed after 40 years.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Training and Education, National Emergency Training Center, Federal Emergency Management Agency, Emmitsburg, Maryland 21727; all Regional Directors of FEMA, addresses are listed in Appendix AA.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the appropriate system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope

and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Education Institutions, National Emergency Training Center, records derived from student applications and academic records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/NETC-4

SYSTEM NAME:

Home Study Courses.

SYSTEM LOCATION

Federal Emergency Management Agency, National Emergency Training Center, Emmitsburg, Maryland 21727. All Regional Offices, and Computer Center, Olney, Maryland. Addresses of the Regional Directors of FEMA are listed in Appendix AA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any citizen who desires to further his knowledge of emergency management in general, basic concepts of radiological monitoring, the duties of a local Emergency Management Director Coordinator, or the duties of a Shelter Manager, is eligible for these courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

File includes individual application forms, group enrollment forms, group completion forms, key punch cards and related computer printout indicating home study entry, progress, grades and

completion, correspondence and related academic documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 50 U.S.C. App. 2253, 2281; Reorganization Plan No. 3 of 1978, 43 FR 41953; and E.O. 12148, 44 FR 43239.

PURPOSE(S):

For the purpose of providing home study courses to citizens who cannot attend regular classroom courses and certify applicants who successfully complete the courses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Michigan Technological University (MTU)—key punch cards to enter applicant into home study program and to release home study materials to applicants, and to forward certificates to applicants who successfully complete a course. Also used to prepare statistical reports for National Emergency Training Center. FEMA Computer Center—use key punch cards to establish printout including name, address, student number, numerical grade for each course unit, date of completion of each course unit and final grade and date of course completion. FEMA Computer Center provides printouts for MTU, National Emergency Training Center, FEMA Regions and State Emergency Management Offices.

National Emergency Training center—to respond to student inquiries relating to completion dates, requests for military reserve retirement credits and requests for certificates of completion that were awarded but did not arrive for the student. Uses MTU prepared statistics to prepare annual, quarterly and monthly reports for Director, FEMA. Provides course completion/progress data to State and local governments.

FEMA Regional Offices—use the printout to measure training progress in the Region. The Regions also provide each State Emergency Management Office with monthly printouts of home study activities and completion.

State Emergency Management Offices—Use the printouts to schedule more advanced training for students who have completed basic emergency management instruction through home study courses.

Other routine uses may include Nos. 2, 3, 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

FEMA Computer Center stores records on computer magnetic tapes or disks. National Emergency Training Center FEMA Regions, MTU and State Emergency Management Offices store printouts of records as developed and forwarded by FEMA Computer Center.

RETRIEVABILITY:

By name and address of Student Number.

SAFEGUARDS:

Records are retained in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

All Home Study records at National Emergency Training Center, are destroyed after 6 years. Home Study records held by FEMA Regions, Michigan Technological University and State Emergency Management Offices are destroyed when obsolete, superseded or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Training and Education, National Emergency Training Center, Emmitsburg, Maryland 21727; all Regional Directors of FEMA, addresses are listed in Appendix AA.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the appropriate system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter.

The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Application forms completed and submitted by applicants for FEMA Home Study courses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/NETC-5**SYSTEM NAME:**

Federal Employees with Fire Related Expertise.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, U.S. Fire Administration, National Emergency Training Center, Emmitsburg, Maryland 21727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees with expertise in fire prevention and control and associated fields.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, agency and area of expertise.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 8(e) and 21 (b)(1) and (e) of the Federal Fire Prevention and Control Act of 1974, Pub. L. 93-498; 88 Stat. 1535 (15 U.S.C. 2207, 2218); E. O. 12127, 44 FR 19367; and Reorganization Plan No. 3 of 1978, 43 FR 41943.

PURPOSE(S):

For the purpose of identifying Federal employees with expertise in fire prevention and control and associated fields.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals is provided to Federal, state, local or international agencies and members of the fire service community, including, but not limited to, fire safety and protection organization, state fire marshals, and firemen, in response to requests indicating that the individual or organization making the request would benefit from the expertise of individuals in the system. Such disclosures are

made only if the subject individual has given prior written consent.

Additional routine uses may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, bound paper directory and magnetic tape.

RETRIEVABILITY:

By individual's name, expertise, agency and geographic location.

SAFEGUARDS:

Personnel screening; hardware and software computer security measures. Paper records are retained in a locked container and/or room. Records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are updated biennially and retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Training and Education, Federal Emergency Management Agency, National Emergency Training Center, Emmitsburg, Maryland 21727.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Subject individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/NETC-6

SYSTEM NAME:

President's and Secretary's Award Nominees.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, U.S. Fire Administration, National Emergency Training Center, Emmitsburg, Maryland 21727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals nominated to receive the President's Award for outstanding Public Safety Service and individuals nominated to receive the Secretary's Award for Distinguished Public Safety Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of the candidate, his or her position and title, whether the nomination is for the President's or Secretary's Award, the public agency served, the locale where the candidate performs his or her duties, the name of the nominating official, a summary description of the outstanding contribution, distinguished service or extraordinary valor of the nominee, and the relevant duties relating thereto, and copies of any published factual accounts of the nominee's accomplishments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2214; E.O. 12127, 44 FR 19367; and Reorganization Plan No. 3 of 1978, 43 FR 41943.

PURPOSE(S):

For the purpose of selecting individuals who have been nominated to receive the President's Award for Outstanding Public Safety Service and the Secretary's Award for Distinguished Public Safety Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) President's Award Nominees—Information about individuals nominated for the President's Award is provided to selected members of the public safety community, including but

not limited to, fire safety and protection organizations, state fire marshals and firemen, civil defense officers, and law enforcement, corrections or court officers in connection with the evaluation and selection of recipients. Information is also provided to the Department of Defense, the Department of Justice, and the Executive Office of the President; (b) Secretary's Award Nominees—Information about individuals nominated for the Secretary's Award is provided to selected members of the fire service community, including but not limited to, fire safety and protection organizations, state fire marshals and firemen in connection with the evaluation and selection of recipients. When it appears that a nominee's accomplishments are in the areas of civil defense or law enforcement, nominations may be sent to the Department of Defense and/or the Department of Justice.

Additional routine uses may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed by file number and cross-referenced alphabetically by nominee names.

SAFEGUARDS:

Paper records are retained in a locked container and/or room. Records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Training and Education, Federal Emergency Management Agency, National Emergency Training Center, Emmitsburg, Maryland 21727.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Heads of Federal government departments and agencies, governors of states or territories, or chief executives of any general governmental unit within any state or territory.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/FIA-2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a servicing agent under contract to the Federal Insurance Administration; FIA Headquarters office, Federal Emergency Management Agency, Washington, D.C. 20472. Copies of some of the files are also provided to the FEMA Regional offices when additional information is requested from their respective offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for individual flood insurance and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

Flood insurance, policy issuances and administration records and claims adjustment records, including applications for emergency and regular flood insurance, endorsements, renewal applications, cancellation notices, policy questionnaires, notice of loss, and proofs of loss.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of

1973, 42 U.S.C. 4001, et seq.; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 43 FR 41943; and E.O. 12127, 44 FR 19367.

PURPOSE(S):

For the purpose of carrying out the National Flood Insurance Program and verifying nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To property loss reporting bureaus, State insurance departments, and insurance companies investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA; for use of insurance agents, brokers and adjusters, and lending institutions for carrying out the purposes of the National Flood Insurance Program; to Small Business Administration, the American Red Cross, the Farmers Home Administration; State and local government individual and family grant and assistance agencies, including but not limited to the State of Ohio Disaster Services Agency and the Johnstown, Pennsylvania, Redevelopment Authority for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster; to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such States and local governments might reasonably expect to assume in the event of a flooding disaster and to further the flood insurance marketing activities of the National Flood Insurance Program. To State and local government individual and family grant and assistance agencies which furnish to the Federal Insurance Administration the names and addresses of policyholders for purposes consistent with relocation projects of the Federal Insurance Administration and acquisition projects under the National Flood Insurance Program carried out pursuant to Section 1362 of the National Flood Insurance Act of 1973, as amended, and to State and local government agencies who provide the names and addresses of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties for review by the Associate Director, Office of State and Local Programs and Support, to ensure that their State and/or local government agency is engaged in floodplain management improved real property acquisition and relocation projects consistent with the National Flood Insurance Program; and, upon the approval by the Associate Director,

Office of State and Local Programs and Support, that the use is in furtherance of the flood plain management and hazard mitigation goals of the Agency, to State and local government agencies and municipalities to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community.

Additional routine uses may include Nos. 1, 5, 6, and 8, of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape/disc/drum and file folders.

RETRIEVABILITY:

By name and policy number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; paper records in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Policy records are kept as long as insurance is desired and premiums paid and for an appropriate time thereafter and claim records are kept for the statutory time within which to file a claim.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act

Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NPP-1

SYSTEM NAME:

National Defense Executive Reserve System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of National Preparedness Programs, Washington, D.C. 20472; all FEMA regional offices listed in Appendix AA to these notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and incumbents of NDER assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and administrative records, skills inventory, training data, and other related records necessary to coordinate and administer the NDER program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Defense Production Act, 1950, Executive Order 11179, September 22, 1964, as amended by Executive Order 12148, July 20, 1979.

PURPOSE(S):

For the purpose of administering the NDER program, agency officials and officials of participating departments and agencies may obtain from the NDER Coordinator data relevant to reservists assigned to their units.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use may include Nos. 1, 2, 3, 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mag-tape, drum, disc and paper.

RETRIEVABILITY:

By name, personnel data, skills or agency.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; paper records in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retention of records shall be for duration of application or assignment. Disposition of records shall be in accordance with the FEMA Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, National Preparedness Programs, Federal Emergency Management Agency, Washington, D.C. 20472; all FEMA Regional Directors, addresses listed in Appendix AA of these notices.

NOTIFICATION PROCEDURE:

Inquires should be addressed to the system manager(s). Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager(s). Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/SEC-1

SYSTEM NAME:

Security Management System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Security Policy, Office of Executive Administration, Washington, D.C. 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FEMA employees, other Federal agency employees, State employees, and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security records include: Statement of personal history, personal data (e.g. name, address, telephone number and social security number) contained on security clearance forms, rosters, lists, and forms for record container combinations and other related records. Also this system contains records concerning Personnel Security Program for positions associated with computer systems (Chapter 732 of Federal Personnel Manual). Records do not contain investigatory materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12127, 44 FR 19367; Executive Order 12148, 44 FR 43239; Reorganization Plan No. 3 of 1978, 43 FR 41943.

PURPOSE(S):

For the purpose of agency official use, based upon a need-to-know requirement in maintaining office security for sensitive data and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

An employee's level of security clearance may be reported to another agency for the purpose of interagency security administration.

Additional routine use may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mag-tape, drum, disc, paper, and index cards.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Personnel screening; hardware and software computer security measures. Paper records are retained in a locked container and/or room. Records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retention of records shall be for duration of employment. Disposition of records shall be in accordance with FEMA Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant for Security Policy, Office of Executive Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/SLPS-4**SYSTEM NAME:**

Appl for Enrollment in Arch Engr Prof Dev Prog.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of State and Local Programs and Support, Washington, D.C. 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for FEMA professional development courses: Fallout Shelter Analysis (FSA), Protective Construction (PC), Environmental Engineering (EE), Multiprotection Design (MPD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes applicant's name, address, date of birth, education and status of completion in the course.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, 44 USC 3104, 50 USC App. 2253.

PURPOSE(S):

For the purpose of ascertaining qualifications for certification as FSA for issuance of appropriate certificates and development of mailing lists for disseminating new information to them as appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The names and addresses of the individuals are used to print mailing labels to send them the most up-to-date information on Fallout Shelter Analysis. Additional routine use may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Application forms are kept in loose-leaf binders. Some of the data are kept on computer magnetic tapes for processing in conjunction with dissemination of new information.

RETRIEVABILITY:

By the name of the individual to whom the record pertains.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; application forms in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Files are considered permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the **Federal Register**.

RECORD SOURCE CATEGORIES:

Application submitted by applicants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/SLPS-5**SYSTEM NAME:**

FEMA Summer Shelter Survey Program.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of State and Local Programs and Support, Washington, D.C. 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for FEMA Summer Shelter Survey Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes student's name, address, telephone number, college, age, veteran's status, license, curriculum, number of college years completed, prior Summer Shelter Survey training, experience, availability of transportation and training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, 50 U.S.C. App. 2253.

PURPOSE(S):

For the purpose of selecting students for employment under the Summer Shelter Survey Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The names, addresses and phone numbers are provided to the U.S. Army Corps of Engineers to offer the individuals employment until such time as FEMA is prepared to assume the selection process. A report is available to the Office of Personnel Management which indicates which students were hired and which were not.

Additional routine use may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Applications are maintained on magnetic tape, card and loose-leaf binders.

RETRIEVABILITY:

By the name of the individual to whom the record pertains.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; application forms in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retention of records shall be for 2 years. Disposition of records shall be in accordance with the FEMA Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

"Application for FEMA Summer Shelter Survey Program" and "FEMA Summer Shelter Survey Employment Questionnaire" submitted by applicants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/SLPS-6**SYSTEM NAME:**

Program Management Information System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of State and Local Programs and Support, Washington, D.C. 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Local Civil Preparedness Directors/Coordinators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes name and business address of all local civil preparedness directors/coordinators participating in FEMA contributions programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 50 U.S.C. App. 2253; E. O. 12148, 44 FR 43239; Reorganization Plan No. of 1978, 43 FR 41943.

PURPOSE(S):

For the purpose of keeping an up-to-date listing of all local civil preparedness directors/coordinators and advising the public as to who the civil preparedness director/coordinator is for a particular location.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Responding to inquiries from the public advising who the local civil preparedness director/coordinator is for a particular location.

Additional routine uses may include Nos. 5 and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Computer paper printouts and microfiche.

RETRIEVABILITY:

By geographic location number printed alphabetically by State and agency name; name of director/coordinator can be retrieved on the computer printout.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; printouts are kept in locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retention of records shall be until obsolete. Disposition of records shall be in accordance with the FEMA Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, State and Local Programs and Support, Federal

Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Program Paper for Local Civil Preparedness, are prepared by local agencies and submitted to the State and FEMA Regional offices which in turn forward copies to FEMA Headquarters for computer development printouts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/SLPS-11**SYSTEM NAME:**

Interagency Directories System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Emergency Management Agency, Office of State and Local Programs and Office of Resource Management and Administration, Washington, D.C. 20472; all FEMA regional offices listed in Appendix AA to these notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Emergency Management Agency employees and employees of other Federal, State and local agencies with related responsibilities; e.g., members of the Regional Preparedness Committee, the Interagency Emergency Preparedness Committee, and the Regional Field Board as well as Emergency Coordinators, Alternate Emergency Coordinators, State Emergency Preparedness Directors, and State Civil Defense Directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes name, office and home addresses and telephone numbers, and level of security clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11490, as amended and Executive Order 12148.

PURPOSE(S):

For the purpose of providing a locator service and a means of distributing publications and communications for in-house agency use and for the use of member agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To provide the names, addresses and telephone numbers of FEMA subscribers having essential emergency functions to the General Services Administration for forwarding to the public telephone companies to designate those subscriber's home numbers as "essential" for the purpose of providing a minimum of delay in placing calls from their residences during a national disaster or civil emergency.

For the purpose of providing a locator service and a means of distributing publications and communications, interagency directories will be distributed to Federal, regional and state interagency committee members and to the agencies which they represent; e.g., State Emergency Planning Directors, holders of the FEMA Emergency Planning Reference Package for Regional Governments and Central Office Emergency Readiness Instructions and the White House Communications Agency. To the key personnel in Federal agencies and departments involved in emergency preparedness responsibilities.

Additional routine uses may include Nos. 2, 3, 5, and 8 of Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Mag-card, mag-tape, drum, disc and paper.

RETRIEVABILITY:

By name and agency.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; paper records in a locked container and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retention of records shall be for duration of individual membership in interagency organizations. Disposition of records shall be in accordance with the FEMA Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, State and Local Programs and Support, and Associate Director, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. 20472; all Regional Directors of FEMA, addresses are listed in Appendix AA.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: Certain routine uses have been identified as being applicable to many of the FEMA systems of record notices. The specific routine uses applicable to an individual system of record notice will be listed under the "Routine Use" section of the notice itself and will correspond to the numbering of the routine uses published below. These uses are published only once in the interest of simplicity, economy and to avoid redundancy, rather than repeating them in every individual system notice.

1. *Routine Use—Law Enforcement:* In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. *Routine Use—Disclosure When Requesting Information:* A record from a FEMA system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Routine Use—Disclosure of Requested Information:* A record from a FEMA system of records may be disclosed to a Federal agency, in response to a written request, in connection with the hiring or retention of an employee, the issuance of a

security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. Routine Use—Grievance, Complaint, Appeal: A record from a FEMA system of records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with agency's responsibility for evaluation of Federal personnel management.

To the extent that official personnel records in the custody of FEMA are covered within systems of records published by the Office of Personnel Management as government-wide records, those records will be considered as a part of that government-wide system. Other official personnel records covered by notices published by FEMA and considered to be separate systems of records may be transferred to the Office of Personnel Management in accordance with official personnel programs and activities as a routine activities as a routine use.

5. Routine Use—Congressional Inquiries: A record from a FEMA system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

6. Routine Use—Private Relief Legislation: The information contained in a FEMA system of records may be disclosed as a routine use to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

7. Routine Use—Disclosure to the Office of Personnel Management: A record from a FEMA system of records may be disclosed to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

8. Routine Use—Disclosure of Information to NARS (GSA): A record from a FEMA system of records may be

disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 12906.

Appendix AA

Addresses for FEMA Regional Offices

Region I—Regional Director, FEMA, 442 J. W. McCormack, Boston, MA 02109

Region II—Regional Director, FEMA, 26 Federal Plaza, New York, NY 10007

Region III—Regional Director, FEMA, Curtis Building—7th Floor, 6th and Walnut Streets, Philadelphia, PA 19106

Region IV—Regional Director, FEMA, Gulf Oil Building, 1375 Peachtree Street, N.E. (Suite 664), Atlanta, GA 30303

Region V—Regional Director, FEMA, One North Dearborn Street (Room 540), Chicago, IL 60602

Region VI—Regional Director, FEMA, Federal Regional Center, Denton, TX 76201

Region VII—Regional Director, FEMA, Old Federal Office Building (Room 405), Kansas City, MO 64106

Region VIII—Regional Director, FEMA, Federal Regional Center, Building 710, Denver, CO 80225

Region IX—Regional Director, FEMA, Building 105 on the Prescideo, San Francisco, CA 94129

Region X—Regional Director, FEMA, Federal Regional Center, Bothell, WA 98011

[FR Doc. 82-32468 Filed 11-24-82; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

North Kansas Savings and Loan Association; Beloit, Kansas; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended (Carn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320 (October 15, 1982), section 122(d), to be codified at 12 U.S.C. 1729(c)(1)(B)(i)(I), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole Receiver for North Kansas Savings Association, Beloit, Kansas, effective November 19, 1982.

Dated: November 19, 1982.

J. J. Finn,
Secretary.

[FR Doc. 82-32460 Filed 11-24-82; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo*, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they related, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hubco, Inc.*, Union City, New Jersey (leasing activities; New Jersey): To engage, through its subsidiary Hub Leaservice, Inc., Union City, New Jersey, in leasing and lease servicing activities under the provisions of Regulation Y. In making of direct and indirect leases of personal property. The making of leases shall include, but not be limited to, automobile leases obtained directly or through dealers. Servicing of

independent leasing companies or leases that conform to the provisions of Regulations Y. These activities would be conducted from offices in Union City, New Jersey, servicing the entire State of New Jersey. Comments on this application must be received not later than December 20, 1982.

B. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Independence BancCorp*, Independence, Ohio (leasing activities; northern Ohio): To engage through its subsidiary, Independence Equipment Leasing Company, in making leases of personal property (e.g., machine tool equipment, automotive equipment, computers and office equipment) in accordance with the Federal Reserve Board's Regulation Y. These activities would be conducted from an office in Independence, Ohio, serving northern Ohio. Comments on this application must be received not later than December 9, 1982.

2. *Mellon National Corporation*, Pittsburgh, Pennsylvania (investment or financial advisory activities; New York, New York): To engage through its subsidiary, Mellon Financial Services Corporation #2, in providing real estate portfolio investment advice including: serving as the advisory company for a mortgage or real estate investment trust; serving as investment advisory, as defined in section 2(a)(20) of the Investment Company Act of 1940, to an investment company registered under that Act; furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, such as with respect to the issuance of their securities. These activities would be conducted from an office in New York, New York, serving the United States and potential overseas clients. Comments on this application must be received not later than December 20, 1982.

c. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Alabama Bancshares, Inc.*, Montgomery, Alabama (insurance activities; Alabama): To engage, through its wholly-owned subsidiary, FAB Agency, Inc., in the activity of acting as an insurance agent or broker for the sale of credit life, accident, and health insurance directly related to an extension of credit and the sale of property and casualty insurance directly related to an extension of credit. Applicant was engaged in these activities on May 1, 1982 in the State of

Alabama and proposes to engage in these same activities at a new office in Baldwin County, Alabama, serving Baldwin County, Alabama. Comments on this application must be received not later than December 1, 1982.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midland Mortgage Corporation*, Detroit, Michigan, (mortgage banking, nationwide): To engage through its subsidiary, Midland Mortgage Investment Corporation, in the origination and servicing of direct loans to builders, developers, consumers and others for purposes of acquisition, construction and rehabilitation of real property and/or improvements to real property, and to otherwise engage in mortgage banking. These activities would be conducted on a national basis from offices located in Clearwater, Florida; Detroit, Michigan; Orlando, Florida; and Sacramento, California. Comments on this application must be received not later than December 13, 1982.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Union Bancshares, Inc.*, San Antonio, Texas (underwriting activities; Texas): To engage, through its de novo subsidiary, UBI Life Insurance Company in the underwriting of credit life insurance and credit accident and health insurance directly related to extensions of credit by Union Bank. This activity will be conducted from an office in San Antonio, Texas, serving Texas. Comments on this application must be received not later than December 20, 1982.

Board of Governors of the Federal Reserve System, November 19, 1982.

William W. Wiles,
Secretary of the Board.

[FR Doc. 82-32370 Filed 11-24-82; 8:45 am]

BILLING CODE 6210-01-M

Banque Indosuez; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as Indosuez Bank International, Houston, Texas. Indosuez Bank International would operate as a subsidiary of Banque Indosuez, Paris, France. The factors that are considered in acting on the

application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than November 17, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 19, 1982.

William W. Wiles,
Secretary of the Board.

[FR Doc. 82-32371 Filed 11-24-82; 8:45 am]

BILLING CODE 6210-01-M

Federal Reserve Bank of Atlanta; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta street, N.W., Atlanta, Georgia 30303:

1. *Mountain Bancshares, Inc.*, Tracy City, Tennessee; to become a bank holding company by acquiring 80.79 percent or more of the voting shares of First Bank and Trust, Tracy City, Tennessee. Comments on this application must be received not later than December 20, 1982.

B. Federal Reserve Bank of St. Louis
(Delmer P. Weisz, Vice, President) 411
Locust Street, St. Louis, Missouri 63166:

1. *First Bancshares of Northeast Arkansas, Inc.*, Osceola, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of First National bank in Oseola, Osceola, Arkansas. Comments on this application must be received not later than December 15, 1982.

2. *SBC Financial Corp.*, Como, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Como, Como, Mississippi. Comments on this application must be received not later than December 20, 1982.

Board of Governors of the Federal Reserve System, November 19, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-32372 Filed 11-24-82; 8:45am]

BILLING CODE 6210-01-M

Federal Reserve Bank of New York; Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of New York
(A. Marshall Puckett, Vice President) 33
Liberty Street, New York, New York
10045:

1. *Northeast Bancorp, Inc.*, New Haven, Connecticut; to acquire 100 percent of the voting shares or assets of Security Bank & Trust, Bloomfield, Connecticut. Comments on this application must be received not later than December 20, 1982.

Board of Governors of the Federal Reserve System, November 19, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-32373 Filed 11-24-82; 8:45 a.m.]

BILLING CODE 6210-01-M

Fee Schedules for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: New Fee Schedule for the Automated Clearing House Service.

SUMMARY: The Monetary Control Act of 1980 (Title I of Pub. L. 96-221) requires that schedules of fees be established for Federal Reserve Bank services. On December 31, 1980, the Board adopted a fee structure for the automated clearing house service, effective August 1, 1981. The Federal Reserve has now adopted a new fee schedule for this service.

EFFECTIVE DATE: December 30, 1982.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Assistant Director (202/452-2231), or Florence M. Young, Program Manager, (202/452-3955) Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Daniel L. Rhoads, Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 ("Act") requires that fee schedules be developed for Federal Reserve Bank services based on pricing principles established by the board. The Board, in accordance with the requirements of the Act, published for comment proposed pricing principles and fee schedules for services on August 28, 1980 (45 FR 58689). On December 30, 1980, after considering the comments received from the public, the Board adopted revised pricing principles and a fee schedule for the automated clearing house ("ACH") service (46 FR 1338). The ACH fee schedule was effective August 1, 1981. In adopting the 1981 fee schedule for the ACH service, the Board recognized that the ACH service was in the process of development and had not yet reached a mature level. In recognition of this fact, the Board established 1981 fees on the basis of what it regarded as a mature volume of ACH items, which was expected to be achieved in approximately five years. The Board determined that establishing a fee schedule that promotes the continuing development of the ACH service was in the public interest. The Board also committed to review its ACH pricing policy annually.

The Board reviewed its policy of incentive pricing for the ACH service in April 1982 and determined that it was appropriate to continue providing a level of price support for the service. The Board believed that such support was necessary to avoid jeopardizing the future of this payment service. Further, the Board believed that an adequate volume is necessary in order to attract private sector competition in this area. It was also recognized that the private sector would benefit from knowledge of when the Federal Reserve would begin full-cost pricing of the ACH service. Consequently, the Board determined to phase out its incentive pricing policy and establish a date for pricing the ACH service to recover the full costs of providing the service, including the private sector adjustment factor. To achieve a smooth transition, the Board determined that fees for the ACH service will be increased annually to recover an additional 20 percent of the costs of providing the service, plus private sector adjustment factor. Accordingly, the fee schedule established in 1982 would provide for recovery of 40 percent of the current costs of providing the service, including the private sector adjustment factor. The fee schedules to be adopted in 1983, 1984, and 1985 would provide for recovery of 60 percent, 80 percent and 100 percent, respectively, of commercial ACH costs, including private sector adjustment factor.

The structure of the new fee schedule for the ACH service will remain unchanged from the 1981 fee schedule. Fees will continue to be charged to the party originating an ACH debit and the party receiving an ACH credit. Additionally, the fee schedule continues to include an interregional price differential. No fees will be assessed receivers of direct deposit payments made under the Treasury Department's Federal Recurring Payments Program.

In general, receivers of ACH credits will pay a fee that is higher than that paid by originators of ACH debits. This recognizes the benefits accruing to receivers of credits through operating cost savings and improved funds availability that are not realized by originators of day cycle debits.

The 1981 fee schedule did not distinguish between fees paid by originators of cash concentration debits using the night cycle and those paid by originators of debits using the day cycle. In recognition of the substantial benefits that accrue to originators of cash concentration debits using the night cycle, the Board has decided to impose a surcharge for the night cycle operations.

Cash concentration debits are generally time critical since concentration banks are not normally advised of deposits at regional depository institutions until late in the day. Further, because of the relatively high average value of cash concentration debits, the reliability of the ACH mechanism is of importance to originators of these debits. The night cycle also provides originators of cash concentration debits better deposit deadlines and better turnaround times than are provided by day cycle operations. As experience with the night cycle operations is gained, the operational necessity of restricting night cycle operations to cash concentration debits may be eliminated.

The new fee schedule for the Federal Reserve's ACH service is as follows:

DAY CYCLE	
	Cents
Intra-ACH:	
Debits Originated.....	2.0
Credits Received.....	4.0
Inter-ACH:	
Debits Originated.....	3.5
Credits Received.....	5.5
New York Intra-ACH:	
Debits Originated.....	1.0
Credits Received.....	2.0
New York Inter-ACH:	
Debits Originated.....	2.5
Credits Received.....	3.5
NIGHT CYCLE SURCHARGE	
	Cents
Intra- and Inter-ACH Debits Originated.....	5.0
New York Intra- and Inter-ACH Debits Originated.....	5.0

This fee schedule will be effective December 30, 1982. Any comments regarding the fee schedule should be forwarded to your local Federal Reserve office.

By order of the Board of Governors of the Federal Reserve System, November 19, 1982.
William W. Wiles,
Secretary of the Board.

[FR Doc. 82-32369 Filed 11-24-82; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before

consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) Fiat S.p.A.'s proposed acquisition of all voting securities of Impregilo International (U.S.A.), Inc.	Nov. 10, 1982.
(2) Interdec (U.S.A.), Inc.'s proposed acquisition of certain assets of Millmaster Onyx Division of Kewanee Industries, Inc.	Do.
(3) Carl C. Icahn's proposed acquisition of certain voting securities of Dan River, Inc.	Do.
(4) Crane Associate's proposed acquisition of certain voting securities of Dan River, Inc.	Do.
(5) C.C.I. Associate's proposed acquisition of certain voting securities of Dan River, Inc.	Do.
(6) Northwest Energy Company's proposed acquisition of all voting securities of Cities Service Gas Company.	Do.
(7) Seaboard Corporation's proposed acquisition of certain assets of TSC Industries, Inc.	Do.
(8) Robert J. Milano's proposed acquisition of certain assets of Millmaster Onyx Division of Kewanee Industries, Inc.	Do.
(9) Adventist Health System North, Inc.'s proposed acquisition of all assets of Glendale Heights Community Hospital.	Nov. 12, 1982.

For further information contact:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.
Carol M. Thomas,
Secretary.

Transaction	Waiting period terminated effective
(1) Beneficial Corporation's proposed acquisition of certain voting securities of IntraWest Financial Corporation.	Nov. 5, 1982.
(2) Tosco Corporation's proposed acquisition of all voting securities of AZL Resources, Inc..	Nov. 4, 1982.
(3) Tosco Corporation's proposed acquisition of certain voting securities of AZL Resources, Inc..	Do.
(4) Gulf & Western Industries, Inc.'s proposed acquisition of certain voting securities of Hammermill Paper Company.	Nov. 8, 1982.
(5) Royal Insurance PLC's proposed acquisition of all voting securities of Milbank Mutual Insurance Company.	Do.

Transaction	Waiting period terminated effective
(6) Combined International Corporation's proposed acquisition of all voting securities of Rollins Burdick Hunter Company.	Nov. 9, 1982.

For further information contact:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.
Carol M. Thomas,
Secretary.

Transaction	Waiting period terminated effective
(1) Henry J. Block's proposed acquisition of all voting securities of Queen City Savings and Loan Association.	Oct. 28, 1982.
(2) HealthWest Foundation's proposed acquisition of all assets of La Palma Medical Development.	Do.
(3) Thomas E. Nevis and Samuel A. Nevis' proposed acquisition of all voting securities of Pacific International Rice Mills, Inc.	Do.
(4) Jones International, Ltd.'s proposed acquisition of certain assets of Oak Industries, Inc.	Do.
(5) Western Union Corporation's proposed acquisition of all voting securities of E. F. Johnson Company.	Do.
(6) United Telecommunications, Inc.'s proposed acquisition of all voting securities of Aero-Flow Dynamics, Inc.	Do.
(7) Northwestern Mutual Life Insurance Company's proposed acquisition of all assets of The Standard of America Financial Corporation and all voting securities of Standard of America Life Insurance Company.	Do.
(8) Macfield Texturing, Inc.'s proposed acquisition of all voting securities of E. T. Holding, Inc.	Do.
(9) Control Data Corporation's proposed acquisition of all voting securities of Central Savings Association.	Do.
(10) Corporate Property Investor's proposed acquisition of all assets of Aurora Mall Associates.	Oct. 29, 1982.
(11) Masco Corporation's proposed acquisition of all voting securities of Marvel Metal Products Company.	Nov. 2, 1982.

For further information contact:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.
Carol M. Thomas,
Secretary.

Transaction	Waiting period terminated effective
(1) Transamerica Corporation's proposed acquisition of voting securities of Fred S. James & Company, Inc.	Nov. 15, 1982.

For further information contact:
Patricia A. Foster, Compliance
Specialist, Premerger Notification
Office, Bureau of Competition, Room
301, Federal Trade Commission,
Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Carol M. Thomas,
Secretary.

[FR Doc. 82-32376 Filed 11-24-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX—Social Services Block Grant Act; Promulgation for Fiscal Year 1984

AGENCY: Office of Program Coordination
and Review, Office of Human
Development Services, HHS.

ACTION: Notification of Allocation of
Title XX—Social Services Block Grant
Allotments for Fiscal Year 1984.

SUMMARY: This issuance sets forth the
individual allotments to States for Fiscal
Year 1984 pursuant to Title XX of the
Social Security Act, as amended. The
allotments to the States published
herein are based upon the authorization
set forth in Section 2003 of the Act and
are contingent upon congressional
appropriations actions for the fiscal
year. If the Congress enacts and the
President approves an amount different
from the authorization, the allotments
would be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT:
HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section
2003 of the Social Security Act
authorizes \$2.5 billion for Fiscal Year
1984 and provides that it be allocated as
follows:

(1) Puerto Rico, Guam, the Virgin
Islands, and the Northern Mariana
Islands each receive an amount which
bears the same ratio to \$2.5 billion as its
allocation for Fiscal Year 1981 bore to
\$2.9 billion;

(2) The remainder of the \$2.5 billion is
allotted to each State in the same
proportion as that State's population is
to the population of all States, based
upon the most recent data available
from the Department of Commerce.

For Fiscal Year 1984, the allotments
are based upon the Bureau of the
Census population statistics contained
in its publication "Current Population
Reports" (Series P-25, No. 913, issued
May 1982), which is the most recent

satisfactory data available from the
Department of Commerce at this time as
to the population of each State and of all
States.

EFFECTIVE DATE: These allotments shall
be effective October 1, 1983.

FY 1984 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Block grants

Total.....	\$2,500,000,000
Alabama.....	42,466,932
Alaska.....	4,466,780
Arizona.....	30,291,705
Arkansas.....	24,892,539
California.....	262,325,733
Colorado.....	32,145,636
Connecticut.....	33,977,883
Delaware.....	6,483,336
District of Columbia.....	6,841,112
Florida.....	110,401,014
Georgia.....	60,431,627
Guam.....	431,034
Hawaii.....	10,635,706
Idaho.....	10,397,189
Illinois.....	124,267,547
Indiana.....	59,282,407
Iowa.....	31,430,084
Kansas.....	25,835,767
Kentucky.....	39,702,299
Louisiana.....	46,706,037
Maine.....	12,283,644
Maryland.....	46,218,160
Massachusetts.....	62,589,125
Michigan.....	99,786,991
Minnesota.....	44,385,913
Mississippi.....	27,440,339
Missouri.....	53,568,832
Montana.....	8,597,467
Nebraska.....	17,097,358
Nevada.....	9,161,235
New Hampshire.....	10,147,830
New Jersey.....	80,271,934
New Mexico.....	14,397,775
New York.....	190,835,574
North Carolina.....	64,540,630
North Dakota.....	7,133,838
Northern Marianas.....	86,207
Ohio.....	116,884,349
Oklahoma.....	33,609,265
Oregon.....	28,741,342
Pennsylvania.....	128,701,801
Puerto Rico.....	12,931,034
Rhode Island.....	10,332,139
South Carolina.....	34,335,659
South Dakota.....	7,437,405
Tennessee.....	50,001,913
Texas.....	160,088,517
Utah.....	16,457,698
Vermont.....	5,594,318
Virgin Islands.....	431,034
Virginia.....	58,870,422
Washington.....	45,719,442
West Virginia.....	21,162,995
Wisconsin.....	51,411,334
Wyoming.....	5,334,116

Dated: November 19, 1982.

Michio Suzuki,
Acting Director, Office of Program
Coordination and Review.

Approved: November 19, 1982.

Dorcas R. Hardy,
Assistant Secretary for Human Development
Services.

[FR Doc. 82-32427 Filed 11-24-82; 6:45 am]

BILLING CODE 4130-01-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health
and Human Services (HHS) publishes a
list of information collection packages it
has submitted to the Office of
Management and Budget (OMB) for
clearance in compliance with the
Paperwork Reduction Act (44 U.S.C. Ch.
35). The following are those packages
submitted to OMB since the list was last
published on November 19.

Social Security Administration

Subject: Quality Control in Aid to
Families with Dependent Children
(AFDC) and Quality Control in Adult
Programs (Non-integrated forms) (SSA-
4341/4342 (4-78))—Extension

Respondents: Individuals or
households

Subject: Statement Regarding Support
Contributions to Dependent Parents and
Others Applying for Social Security
Benefits (SSA-1783 (1-83))—Revision

Respondents: Individuals

Subject: Applications for Benefits
Under the Federal Mine Safety and
Health Act of 1977, as Amended
(Widows Claim, Child's Claim,
Dependent Claim) (SSA-47, 48, 49 (10-
80))—Revisions

Respondents: Individuals

OMB Desk Officer: Milo Sunderhauf

Health Care Financing Administration

Subject: Inpatient Hospital and
Skilled Nursing Facility Admission and
Billing Form (HCFA-1453)—Revision

Respondents: Hospitals and skilled
nursing facilities which participate in
Medicare

Subject: Section 4440: State Medicaid
Manual Revision: Home and Community
Based Services Model Waiver Request
(HCFA-382)—New

Respondents: State Medicaid agencies

OMB Desk Officer: Fay S. Iudicello.

Copies of the above information
collection clearance packages can be
obtained by calling the HHS Reports
Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201
OMB Reports Management Branch, New Executive Officer Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: November 19, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-32288 Filed 11-24-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. D-82-685]

Designating Order of Succession

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Designation of Order of Succession.

SUMMARY: This designation lists the order of officials to serve as Acting Assistant Secretary for Administration during any absence, disability, or vacancy in the position of the Assistant Secretary for Administration.

EFFECTIVE DATE: November 12, 1982.

FOR FURTHER INFORMATION CONTACT: Robert C. Eisemann, Chief, Organization and Management Analysis Branch, Management Systems and Organization Division, Office of Organization and Management Information, Office of Administration, Department of Housing and Urban Development, 451 7th Street S.W., Washington, D.C. 20410, (202) 426-1891. This is not a toll free number.

Designation: During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Administration is not available to exercise the powers and perform the duties of the Assistant Secretary, appointees to the positions listed below are authorized to act as Assistant Secretary and exercise all the powers, functions, and duties assigned to or vested in the Assistant Secretary. However, no official shall act as Assistant Secretary until all of the appointees listed before such official's

title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. Deputy Assistant Secretary for Administration
2. Director, Office of Budget
3. Director, Office of Finance and Accounting
4. Director, Office of Information Policies and Systems
5. Director, Office of Personnel
6. Director, Office of Procurement and Contracts
7. Director, Office of Administrative Services
8. Director, Office of Training.

In the event of a civil defense emergency declared or proclaimed by the President or by Concurrent Resolution of the Congress in accordance with Section 301 of the Federal Civil Defense Act of 1950 (64 Stat. 1251, 12 U.S.C. App. 2291) and none of the officials named above is able to act, appointees to the positions listed below are authorized to act as Assistant Secretary and exercise all powers, functions, and duties assigned to or vested in the Assistant Secretary. However, no official shall act as Assistant Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. Deputy Director, Office of Budget
2. Deputy Director, Office of Finance and Accounting
3. Deputy Director, Office of Information Policies and Systems
4. Deputy Director, Office of Personnel
5. Deputy Director, Office of Procurement and Contracts
6. Deputy Director, Office of Administrative Services

(Executive Order 11274, 31 FR 5243, 3 CFR; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Executive Order 11490, 34 FR 17567)

Dated: November 12, 1982.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 82-32433 Filed 11-24-82; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. D-82-688]

New York Regional Office; Designation of Order of Succession

AGENCY: Department of Housing & Urban Development.

ACTION: Designation of order of succession.

SUMMARY: Updates the designation of officials who may serve during the

absence, disability, or vacancy in the position of the Regional Administrator.

EFFECTIVE DATE: This designation is effective October 28, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. Leonard Feller, Director, Management and Budget Division, Office of Regional Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, N.Y., N.Y. 10278, (264-4078) (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Designation

Each of the officials appointed to the following positions, and the official named below, are designated to serve as Acting Regional Administrator during the absence, disability, or vacancy in the position of the Regional Administrator with all the powers, functions, and duties redelegated or assigned to the Regional Administrator. Provided, that no official is authorized to serve as Acting Regional Administrator unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator.
2. George M. Beaton.
3. The Director, Office of Regional Administration.
4. Regional Counsel.
5. Regional Director of Program Coordination.
6. The Director, Office of Regional Housing.
7. The Director, Office of Community Planning and Development.
8. The Director, Office of Fair Housing and Equal Opportunity.

This designation supersedes the designation effective April 4, 1982.

(Delegation of Authority by the Secretary effective October 1, 1970, 36 FR 3389, February 23, 1971)

Joseph D. Monticciolo,

Regional Administrator, Region II.

[FR Doc. 82-32440 Filed 11-24-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 10936]

California; Sale of Public Lands in Amador County, Calif.; Realty Action; Sale Cancelled

The Notice of Realty Action published in the *Federal Register* on Thursday, October 21, 1982, at pages 46891-46892, is hereby cancelled. The following

described lands were to be sold on December 20, 1982:

Mount Diablo Meridian, California

T. 6 N., R. 12 E.,

Sec. 3, Tract 52A, Tract 52B, Tract 52C, and Tract 52D;

Containing 8.06 acres.

Dated: November 19, 1982.

Eleanor K. Wilkinson,

*Chief, Lands and Locatable Minerals Section
Branch of Lands and Minerals Operations.*

[FR Doc. 82-32356 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[NM 52786]

New Mexico; Coal Lease Offering

November 19, 1982.

U.S. Department of the Interior,
Bureau of Land Management (BLM),
New Mexico State Office, P.O. Box 1449,
Santa Fe, New Mexico 87501.

Notice is hereby given that certain coal resources in the tract described below in McKinley County, New Mexico, will be offered for competitive lease by sealed bid in accordance with the provisions of the Minerals Lands Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*) The tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid for the tract equals or exceeds the fair market value of the tract as determined by the authorized officer after the sale. The minimum bid for the tract is \$100.00 per acre, or fraction thereof. No bid that is less than \$100.00 per acre, or fraction thereof, will be considered.

If identical high sealed bids are received, the tying high bidders will be asked to submit follow-up sealed bids until a single high bid is received. All tie-breaking sealed bids must be submitted within 5 minutes following the authorized officer's announcement at the sale that identical high bids have been received.

This proposed lease sale is a result of an emergency coal lease application (NM 52786) filed by Carbon Coal Company in accordance with 43 Code of Federal Regulations (CFR) 3425.1-4.

The sale will be held at 10:00 a.m., local time, December 14, 1982, in Room 1009, Conference Room, Bureau of Land Management on the first floor of the Joseph M. Montoya Federal Building and U.S. Post Office, located on South Federal Place, Santa Fe, New Mexico.

All sealed bids must be submitted on or before 10:00 a.m., local time, December 14, 1982, to the Cashier, Room 3031, Bureau of Land Management, New Mexico State Office, on the third floor of the Joseph M. Montoya Federal Building

and U.S. Post Office, at the address shown above. Bids received after 10:00 a.m., December 14, 1982, will not be considered.

Coal Offered: The coal resource to be offered consists of all the recoverable coal in the Gibson Coal Member of the Crevasse Canyon Formation, minable by surface methods, in the following described land, located in McKinley County, New Mexico, approximately 6 miles northwest of the town of Gallup:

T. 15 N., R. 19 W., NMPM, New Mexico

Sec. 4: Lots 1 and 2, S½NE¼

Containing 160.29 acres.

The estimated total recoverable strippable reserves are 483,000 tons and are contained within ten coal beds. The average quality of the coal beds is as follows (as received): 10,252 Btu per pound, 0.58 percent sulfur and 12.55 percent ash. The average thickness of the individual coal beds ranges from 1.3 to 3.3 feet and the area underlain by surface minable coal is approximately 24.2 acres.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of \$3.00 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of the coal shall be determined in accordance with 30 CFR 211.63.

Notice of Availability: Bidding instructions are included in the Detailed Statement of the Lease Sale. A copy of the Statement and of the proposed coal lease are available at the BLM New Mexico State Office, Room 3031, at the address given above. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentor and meeting exemptions stated in the Freedom of Information Act, are also available for public inspection at the aforementioned Room 3031, BLM New Mexico State Office in Santa Fe, New Mexico.

Monte G. Jordan,

Associate State Director.

[FR Doc. 82-32348 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[NM 50410 OK]

New Mexico; Coal Lease Offering

U.S. Department of the Interior,
Bureau of Land Management (BLM),
New Mexico State Office, P.O. Box 1449,
Santa Fe, New Mexico 87501.

Notice is hereby given that certain coal resources in the tract described

below in LeFlore County, Oklahoma, will be offered for competitive lease by sealed bid in accordance with the provisions of the Minerals Lands Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). The tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid for the tract equals or exceeds the fair market value of the tract as determined by the authorized officer after the sale. The minimum bid for the tract is \$100.00 per acre, or fraction thereof. No bid that is less than \$100.00 per acre, or fraction thereof, will be considered.

If identical high sealed bids are received, the tying high bidders will be asked to submit followup sealed bids until a single high bid is received. All tie-breaking sealed bids must be submitted within 5 minutes following the authorized officer's announcement at the sale that identical high bids have been received.

The Bureau of Land Management cancelled the Oklahoma Subregion of the Western Interior Coal Production Region and designated federal coal reserves in Oklahoma open to lease by application in accordance with 43 Code of Federal Regulations (CFR) 3425.1-5 **Federal Register**, Vol. 46 No. 157, pp. 41218-41219, August 14, 1981). This proposed lease sale is a result of such an application (NM 50410 OK), filed by HFCO Incorporated.

The sale will be held at 10:00 a.m. local time, December 14, 1982, in Room 1009, Conference Room, Bureau of Land Management, on the first floor of the Joseph M. Montoya Federal Building and U.S. Post Office, located on South Federal Place, Santa Fe, New Mexico.

All sealed bids must be submitted on or before 10:00 a.m., local time, December 14, 1982, to the Cashier, Room 3031, Bureau of Land Management, New Mexico State Office, on the third floor of the Joseph M. Montoya Federal Building and U.S. Post Office, at the address shown above. Bids received after 10:00 a.m., December 14, 1982, will not be considered.

Coal Offered: The coal resource to be offered consists of all the recoverable coal, minable by surface methods, in the following described land, located in LeFlore County, Oklahoma, 7 miles northwest of the town of Spiro and 1 mile southwest of the community of Tucker:

T. 9 N., 24 E., Indian Meridian, Oklahoma

Sec. 3: Lot 1 (NE¼NE¼), SW¼NE¼,

NW¼SE¼NE¼, NW¼NW¼SE¼

Excluding therefrom the area within 100 feet of either side of Cache Creek, covering approximately 1.5 acres.

The area to be leased contains approximately 98.29 acres and the estimated total recoverable strippable reserves are 89,800 tons.

The proposed lease area is underlain by the Cameron Sandstone Member and shale member of the McAlester Formation, Des Moines Series, Pennsylvania System. The Stigler coal bed occurs near the base of the shale member, averages 1.3 feet thick and lies at strippable depths of less than 70 feet over approximately 48 acres on the proposed lease area. The Stigler coal is low to medium volatile bituminous and averages (as received) 13,000 Btu per pound, 2 percent sulfur and 6 to 12 percent ash.

Qualified Surface Owners: The surface of the land to be offered in this coal lease sale is owned by qualified surface owners as defined in Section 714 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977 and 43 CFR 3400.0 0-5(gg). The surface owners have consented to the surface mining of this land under transferrable consent agreements entered into, as lessors, with HFCO Inc., the applicant of this competitive sale, as lessee. The transferrable consent agreements satisfy the surface owner requirements of SMCRA and 43 CFR 3427. As one of the terms and conditions, the lessee under the agreement has agreed to pay the surface owners \$2,500 per acre as surface damages for all of their land permitted and bonded for the mining operation.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of \$3.00 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of the coal mined by surface mining methods. The value of the coal shall be determined in accordance with 30 CFR 211.63.

Under the provisions of 43 CFR 3473.3-2(d), the Department of the Interior may, after lease issuance, consider an application for a royalty reduction. A royalty reduction may be granted under the regulations if it is determined necessary in order to promote development or if the lease cannot be successfully operated under its terms. The Department does not guarantee that any application for a royalty reduction will be approved.

Notice of Availability: Bidding instructions are included in the Detailed Statement of the Lease Sale. A copy of the Statement and of the proposed coal lease are available at the BLM New

Mexico State Office, Room 3031, at the address given above and at the BLM Oklahoma Resource Area Office, Alfred P. Murrah Federal Building, Room 548, 200 N.W. Fifth Street, Oklahoma City, Oklahoma 73102. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentor and meeting exemptions stated in the Freedom of Information Act, are also available for public inspection at the aforementioned Room 3031. BLM New Mexico State Office in Santa Fe, New Mexico.

Monte G. Jordan,
Associate State Director.

[FR Doc. 82-32349 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[SAC 075323]

California; Termination of Proposed Withdrawal and Reservation of Land

November 17, 1982.

Notice of Bureau of Reclamation, U.S. Department of the Interior, application SAC 075323 for withdrawal and reservation of the following described land lying within the Shasta Trinity National Recreation Area from the mining laws (30 U.S.C. Ch. 2), for construction of Trinity reservoir and road in connection with the Central Valley Project was published as FR Doc. 63-4052 on page 3787 of the issue of April 18, 1963, and republished as FR Doc. 78-9839 on pages 15502 and 15503 of the issue of April 13, 1978. The applicant has withdrawn its application in its entirety.

Mount Diablo Meridian

T. 33 N., R. 8 W.,
Sec. 18, E½NE¼NE¼.

The area described aggregates 20 acres in Trinity County, California.

Therefore, pursuant to the regulations contained in 43 CFR 2310.2-1, these lands shall immediately be relieved of the segregative effect of the above mentioned application.

Walter F. Holmes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-32355 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-5524]

Idaho; Termination of Proposed Withdrawal and Reservation of Lands

November 18, 1982.

Notice of an application, serial

number I-5524, for withdrawal and reservation of lands was published as FR Doc. No. 72-12325 on page 15944 of the issue for August 8, 1972. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 10:00 a.m. on December 27, 1982 relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Boise National Forest

Lowman Research Natural Area—Boise Meridian

T. 8 N., R. 7 E.,
Sec. 2, W½ of lot 4, NW¼SW¼NW¼;
Sec. 3, lots 1,2,3, E½ of lot 4, S½NE¼,
NE¼SW¼NW¼, SE¼NW¼, NE¼SW¼,
N½N½SE¼.
T. 9 N., R. 7 E.,
Sec. 34, W½SW¼NE¼, SE¼SW¼NE¼,
S½NW¼NW¼, S½NW¼, E½W½SW¼,
E½SW¼, W½NE¼SE¼, W½SE¼,
SE¼SE¼.

The areas described total 770.86 acres.

Bear Creek Research Natural Area—Boise Meridian

T. 10 N., R. 10 E.,
Sec. 24, S½NE¼SW¼, NE¼SW¼SW¼,
S½SW¼SW¼, SE¼SW¼, W½NE¼SE¼,
W½SE¼, SE¼SE¼;
Sec. 25, N½, NE¼SW¼, N½NW¼SW¼,
W½NE¼SE¼, NW¼SE¼;
Sec. 26, NE¼NE¼NE¼, S½NE¼NE¼,
E½SE¼NE¼, N½NW¼SE¼NE¼,
SE¼NW¼SE¼NE¼, NE¼SW¼SE¼NE¼,
S½SW¼SE¼NE¼, NE¼NE¼SE¼,
E½NW¼NE¼SE¼.

The areas described aggregate 1,520.86 acres in Boise County.

William E. Ireland,

Acting Chief, Branch of L&M Operations.

[FR Doc. 82-32350 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

Relocation of Idaho State Office, Boise, Idaho; Correction

This document corrects the mailing address contained in the notice published November 12, 1982, (47 FR 51231-51232).

The zip code should be changed from 83702 to 83706.

Dated: November 18, 1982.

Louis B. Bellesi,
Acting State Director.

[FR Doc. 82-32351 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[NM 54144]

New Mexico; Legal Notice

November 19, 1982.

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. This document amends a legal notice that appeared at page 46890 in the **Federal Register** of Thursday, October 21, 1982 (47 FR 46890). The action is necessary to make changes in the land description due to an amendment filed by the applicant. The lands now included in the application are located in McKinley County, New Mexico and are described as follows:

- T. 17 N., R. 11 W., NMPM, New Mexico
 Sec. 1: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 2: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 3: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 4: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 5: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 6: Lots 1, 2, 3, 4, 5, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 8: NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 9: N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$;
 Sec. 10: NE $\frac{1}{4}$;
 Sec. 11: N $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 12: All;
 Sec. 13: All;
 Sec. 14: All;
 Sec. 15: NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 23: NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 24: All.
- T. 18 N., R. 12 W., NMPM, New Mexico
 Sec. 6: Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 8: N $\frac{1}{2}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 15: SW $\frac{1}{4}$;
 Sec. 17: SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 19: SE $\frac{1}{4}$;
 Sec. 20: NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;
 Sec. 21: All;
 Sec. 22: All;
 Sec. 23: SW $\frac{1}{4}$;
 Sec. 26: All;
 Sec. 27: All;
 Sec. 28: All;
 Sec. 29: All;
 Sec. 30: Lots 1, 2, 3, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 31: NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 32: SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 33: N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 34: N $\frac{1}{2}$;
 Sec. 35: N $\frac{1}{2}$.
- T. 18 N., R. 13 W., NMPM, New Mexico
 Sec. 22: NW $\frac{1}{4}$, S $\frac{1}{2}$;
 Sec. 26: NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.
 Containing 15,998.10 acres.

Any party electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501 and Boulder Exploration Group, Inc., 885 Arapahoe Street, Boulder, Colorado 80302. Such written notice must be received no later than 30 calendar days after the publication of this notice in the **Federal Register**.

This proposed exploration program is for the purpose of determining the

quality and quantity of the coal in the area and is fully described and will be conducted pursuant to an exploration plan to be approved by the Minerals Management Service and the Bureau of Land Management. A copy of exploration plan as submitted by Boulder Exploration Group, Inc., may be examined at the Bureau of Land Management State Office, Room 3031, Joseph M. Montoya Federal Building and U.S. Post Office, South Federal Place, Santa Fe, New Mexico, and the Minerals Management Service, 411 N. Auburn Avenue, Farmington, New Mexico.

Monte D. Jordan,
 Associate State Director.

[FR Doc. 82-32347 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

New Mexico: Intent To Amend the Chaco Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Amend the Chaco Management Framework Plan.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management will amend portions of the Chaco Management Framework Plan (MFP). This action is in response to a request from Santa Fe Pacific Railroad Company (SF) to exchange private coal lands for federal coal lands in McKinley County, New Mexico. The MFP amendment will assess the environmental and socio-economic impacts of the exchange proposal. The District Manager's decision is expected in April, 1983.

SUPPLEMENTARY INFORMATION: The Albuquerque District will amend portions of the Chaco MFP in response to a request from Santa Fe Pacific Railroad Company (SF) to exchange private coal lands in or near the Lee Ranch West, Lee Ranch East, Divide, and Crownpoint East competitive coal lease tracts, for federal coal in the Lee Ranch Middle and Lee Ranch West competitive coal lease tracts.

Santa Fe Pacific Railroad Company proposes a coal-for-coal exchange of approximately 148,280 million tons of surface mineable coal reserves in the San Juan River Coal Region, for approximately 141,719 million tons of surface mineable federal coal reserves.

The general locations and acreages involved are:

	Acres
T. 15 N., R. 8 W.....	1,600
T. 15 N., R. 10 W.....	321
T. 16 N., R. 8 W.....	1,720
T. 16 N., R. 9 W.....	1,100
T. 16 N., R. 10 W.....	2,270
T. 18 N., R. 11 W.....	4,477
Total.....	12,297
Federal coal lands requested for exchange:	
T. 15N., R. 7 W.....	3,612
T. 15 N., R. 8 W.....	2,800
T. 16 N., R. 7 W.....	1,132
Total.....	7,544

Management decisions will be made based on the following criteria: the application of unsuitability criteria, coal values, the resolution of conflicts with existing MFP decisions, and an analysis of those values that could additionally be impacted by this coal exchange proposal. Background standards and procedures for this MFP amendment preparation are contained in 43 CFR Part 3400 and 43 CFR Part 1600.

Anticipated issues include but are not limited to grazing, relocation, cultural resources, geology, socio-economics and soils. During the amendment process, an Environmental Assessment (EA) will be conducted by staff specialists of the Albuquerque District. Disciplines to be represented include cultural resources, geology, hydrology, land uses, socio-economics, soils, recreation, wildlife, range, visual resource management, and paleontology.

Public participation opportunities will be provided in the following ways: (1) A **Federal Register** notice will announce initiation of the amendment process; (2) A news release will appear in local newspapers, asking interested parties to identify issues of concern and impacts that should be addressed; (3) A notice of intent to amend the MFP will be sent to federal, state, and local governments that would be concerned with the plan or have land use regulatory authority in the vicinity of the proposed amendment, asking them to identify issues and concerns; (4) At the February 22, 1983 scheduled meeting of the San Juan River Regional Coal Team, the need for the amendment will be presented; (5) A **Federal Register** notice will be published announcing the Decision of the District Manager. Protests will be received by the State Director for 30 days following that notice. The amendment may become final after protests are resolved.

For further information, contact Richard Watts, Bisti Project Supervisor, Bureau of Land Management, Farmington Resource Area Office, 900 La Plata Highway, P.O. Box 568, Farmington, New Mexico 87401, phone (505) 325-3581. Documents relevant to

	Acres
SF offered coal lands:	
T. 15N., R. 6 W.....	809

the planning process are available for public inspection at the above address.

Dated: November 17, 1982.

L. Paul Applegate,
District Manager.

[FR Doc. 82-32353 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

California Desert District, Tecopa Hot Springs; Closure of Public Land to Vehicle Parking and Overnight Camping

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of public land to vehicle parking and overnight camping.

SUMMARY: Notice is hereby given of the closure to vehicle parking and overnight camping on the following public lands:

San Bernardino Base and Meridian

T. 20 N., R. 7 E.,

All public lands in Section 4,
All public lands in Section 9.

T. 21 N., R. 7 E.,

N½ of Section 19, S½ of Section 28,
All public lands in Section 29,
All public lands in Section 32,
NE¼, N½ of the NW¼, and SW¼ of the
NW¼ of Section 33, W½ of Section 34.

The above aggregates 2,480 acres in Inyo County, California.

Mineral claimants operating under an approved plan of operations and any other person using public lands under a valid BLM use authorization are exempt from these restrictions.

The reasons for this closure are:

1. To meet the requests of Inyo County officials and residents of Tecopa and Tecopa Hot Springs.

2. To protect springs and surface water from pollution.

3. To protect the health and safety of residents.

Inyo County officials and residents of the towns of Tecopa and Tecopa Hot Springs have been concerned about the pollution and land-use problems associated with non-authorized long-term camping on public lands during the winter months by users of the Hot Springs. Sufficient camping and trailer spaces exist for such over-night use in nearby commercial and county trailer parks and campgrounds.

The authority for this closure is 43 U.S.C. 315a, 1181(a-c), 1201, 1701 et. seq.; 16 U.S.C. 4601-6a, 670, 1281c; 43 CFR 836.3, 8342.1; and E.O. 11644, as amended.

DATE: This notice is effective upon publication and will remain in effect until a formal notice is published which opens the area.

FOR FURTHER INFORMATION CONTACT: Area Manager, Barstow Resource Area,

831 Barstow Road, Barstow, California 92311, or telephone (619) 256-3591.

Dated: November 17, 1982.

Wesley T. Chambers,
Acting District Manager.

[FR Doc. 82-32352 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[SAC 076301]

California; Termination of Proposed Withdrawal and Reservation of Land

November 17, 1982.

Notice of Bureau of Reclamation, U.S. Department of the Interior, application SAC 076301 for withdrawal and reservation of the following described land lying within the Shasta Trinity National Recreation Area from the mining laws (30 U.S.C. Ch 2), for construction of Trinity River Division of the Central Valley Project was published as FR Doc 63-8520 on page 8220 of the issue of August 9, 1963, and republished as FR Doc 78-8793 on page 14135 of the issue of April 4, 1978. The applicant has withdrawn its application in its entirety.

Mount Diablo Meridian

T. 32 N., R. 6 W.,

Sec. 27, SE¼SW¼NW¼.

The area described aggregates approximately 10 acres in Shasta County, California.

Therefore, pursuant to the regulations contained 43 CFR 2310.2-1, these lands shall immediately be relieved of the segregative effect of the above mentioned application.

Walter F. Holmes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-32354 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

District Manager, Medford, Oregon; Redefinition of Authority

Pursuant to the authority contained in Section 3.1 of Bureau Order No. 701, as amended, the following specific authorities delegated to the District Manager in the cited order are hereby redelegated to the Area Manager: Section 3.9—Land Use

- (m) Rights-of-way
- (o) Special land-use permits.

The above authorities are to be performed in their respective areas of responsibility and in accordance with existing policies and regulations.

This redelegation is effective December 1, 1982.

Dated: November 19, 1982.

Hugh R. Shera,
District Manager.

[FR Doc. 82-32416 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[INT DEIS 82-71]

Draft Eugene Timber Management Environmental Impact Statement; Availability of DEIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental impact statement for the Eugene EIS area. The proposal involves implementing a 10-year timber management plan on public lands in the Siuslaw and Upper Willamette Sustained Yield Units of the Eugene District in western Oregon. Public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 18th and C Streets NW., Washington, D.C. 20240.

Bureau of Land Management, Office of Public Affairs, 825 N.E. Multnomah St., Portland, OR 97208.

Bureau of Land Management, Eugene District Office, 1255 Pearl Street, P.O. Box 10228, Eugene, Oregon 97440.

Oregon State Library, State Library Building, Salem, OR 97310.

Oregon State University Library, Government Document Section, Corvallis, OR 97331.

Portland State University Library, 724 S.W. Morrison, Portland, OR 97201.

University of Oregon Library, Government Document Section, Eugene, OR 97403.

Lane Community College Library, 4000 E. 30th Ave., Eugene, OR 97405.

Linn-Benton, Community College Library, Albany, OR 97321.

Umpqua Community College Library, P.O. Box 956, Roseburg, OR 97470.

Eugene Public Library, 100 West 13th Ave., Eugene, OR 97401.

Springfield Public Library, 320 North A Street, Springfield, OR 97477.

Cottage Grove Public Library, 40 S. 6th Street, Cottage Grove, OR 97424.

Brownsville Public Library, 146 Spalding Ave., Brownsville, OR 97439.

Florence City Library, 250 Highway 101 North, Florence, OR 97439.

A limited number of copies are available upon request from the Bureau of Land Management, Oregon State Office, or the Eugene District Office, at the above addresses. A workshop and an informal public meeting will be held during the review period to address questions and assist in the review

process. Dates, locations and times will be announced prior to each meeting.

Written comments on the DEIS will be accepted by the Eugene District Manager until January 24, 1983.

Dated: November 5, 1982.

Philip C. Hamilton,

Acting Chief, Division of Resources.

[FR Doc. 82-32378 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

Automated Simultaneous and Gas Lease Applications

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Requirement to Properly Complete Lease Applications.

SUMMARY: This notice specifies to the public the requirement that all simultaneous oil and gas lease applications must be properly completed in a manner that does not prevent automated processing. Effective immediately, failure to properly complete an application shall result in its rejection.

FOR FURTHER INFORMATION CONTACT:

Lois Mason, Division of Oil, Gas and Geothermal (532); Bureau of Land Management; Washington, D.C. 20240; Telephone (202) 343-7753.

SUMMARY INFORMATION: By notice in the *Federal Register* on November 12, 1981 (46 FR 55783 et seq.), the Bureau of Land Management (BLM) established a requirement that all applications filed on BLM Form 3112-6 and 3112-6(a) (OMB No. 1004-0065) for noncompetitive oil and gas leases issued by the automated simultaneous drawing system must be completed and received in a condition that the authorized officer determines would permit automated processing.

This notice is hereby published to draw direct emphasis to this requirement. Automated simultaneous oil and gas lease application forms 3112-6 and 3112-6a which are folded, spindled, or otherwise mutilated, which are incorrectly completed in any manner, which indicate an improper or incomplete Social Security Number, Employer Identification Number, BLM Applicant Number or other identification number, which contain information on Part B (Form 3112-6a) that does not correctly correspond to information on Part A (Form 3112-6), which contain entries that are obscured by incomplete erasure, stray marks, tape or other foreign substances, or which in any other way prevent fully automated processing will be considered unacceptable. The public is hereby notified that effective immediately such

applications shall be rejected without right of appeal or protest, and the nonrefundable filing fee shall be retained to cover processing costs.

Dated: November 18, 1982.

Arnold E. Petty,

Acting Associate Director.

[FR Doc. 82-32405 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 19736 (WASH)]

Washington; Order Providing for Opening of National Forest Lands

1. By order dated June 30, 1982, the Federal Energy Regulatory Commission vacated the land withdrawal in its entirety for Power Project No. 1131 of December 17, 1930, as to the following described lands:

Willamette Meridian

Mt. Baker National Forest

T. 39 N., R. 9 E., unsurveyed,
Sec. 5, N½NW¼NW¼;
Sec. 6, That portion of the NE¼NE¼ lying within project boundary.

T. 40 N., R. 9 E.,

Sec. 31, Those portions of Lot 8 and SE¼SE¼ lying within project boundary.

The areas described aggregate approximately 6.00 acres in Whatcom County, Washington.

2. The lands described in paragraph 1 are included in Power Site Classification 126 and Power Site Classification 316 and remain withdrawn from operation of the public land laws generally.

3. Under the authority delegated by Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526), as amended, it is ordered that at 9:30 a.m., on January 3, 1983, the lands described in paragraph 1, will be open to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621). The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Dated: November 18, 1982.

David E. Sinclair,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-32415 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction

Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the Office of Management and Budget reviewing official, Mr. Rick Otis, at 202-395-7340.

Title: Application for Federal Assistance and attachments, to document proposals for grant funding

Form Number: (SF) 424

Frequency: On occasion

Description of Respondents: State fish and wildlife agencies

Annual Responses: 200

Annual Burden Hours: 8,000

Service Clearance Officer: Arthur J. Ferguson, 202-653-7499

Ronald E. Lambertson,

Associated Director-Federal Assistance.

November 18, 1982.

[FR Doc. 82-32413 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Superior Oil Co.; Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that the Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4270, Block 243, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana.

FOR FURTHER INFORMATION CONTACT:

Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information

contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 19, 1982.

John L. Rankin,
*Acting Regional Manager, Gulf of Mexico,
OCS Region.*

[FR Doc. 82-32409 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register**.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Douglas Galloway (202) 275-7278

or

Tom Smerdon (202) 275-7277

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub- No.	Name of railroad, contract no. and specifics	Re- view Board	Decided date
396	Union Pacific Railroad Co., ICC-UP-C-0071, Supplement 1 (diesel fuel).	*3	Nov. 17, 1982.
397	Consolidated Rail Corp., ICC-CR-C-0033B and 0043B (freight, all kinds).	*1	Do.
398	Cairo Terminal Railroad Co., ICC-CTML-C-0001 (scrap foam).	*2	Do.
399	Missouri Pacific Railroad Co., ICC-MP-C-0073, Supplement 4 (canned or preserved foodstuffs).	*3	Do.
400	Missouri Pacific Railroad Co., ICC-MP-C-0189 (soybean meal).	*1	Do.
401	Chicago and North Western Transportation Co., ICC-CNW-C-0382 (iron ore pellets).	*1	Do.
402	Chicago and North Western Transportation Co., ICC-CNW-C-0378, 0379, and 0380 (grain or oil seeds).	*2	Do.
403	The Baltimore and Ohio Railroad Co., ICC-BO-C-0088 (manganese ore).	*3	Do.
404	Missouri-Kansas-Texas Railroad Co., ICC-MKT-C-0119, Supplement 3 (corn, grain sorghums, soybeans, and wheat), via the ports of Galveston and Houston, TX.	*1	Do.
405	Southern Pacific Transportation Co., ICC-SP-C-0261 (soybean meal).	*2	Do.
407	Chicago and North Western Transportation Co., ICC-CNW-C-0377 (grain or oil seeds).	**1	Nov. 18, 1982.
408	Chicago and North Western Transportation Co., ICC-CNW-C-0376 (grain or oil seeds).	*2	Do.
409	Atchison, Topeka and Santa Fe Railway Co., ICC-ATSF-C-00144 (wheat grain mill feed).	*3	Do.
410	Consolidated Rail Corp., ICC-CR-C-0229 (scrap iron or steel).	*1	Do.

* Review Board No. 1, Members Parker, Chandler, and Fortier. Review Board No. 2, Members Carleton, Williams, and Ewing. Member Carleton not participating. Review Board No. 3, Members Krock, Joyce, and Dowell.

** Review Board No. 1, Members Parker, Chandler, and Fortier. Member Parker not participating. Review Board No. 3, Members Krock, Joyce, and Dowell. Member Krock not participating.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-32145 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use

compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cone Mills Corporation, 1201 Maple St., Greensboro, NC 27405.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: Ragan Hardware Company, a North Carolina corporation.

1. Parent corporation: Merchants Distributors, Inc., P.O. Box 2148, Hickory, NC 28601.

2. Wholly-owned subsidiary which will participate in the operation and State of incorporation: Merchants Transport of Hickory, Inc., 543 12th Street Drive, NW., Hickory, NC 28603.

State of incorporation: North Carolina.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32338 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 L.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: November 19, 1982.

By the Commission, Heber P. Hardy,
Director Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

MC-F-14984, filed October 27, 1982. SONS TRANSPORTATION CO., INC. (3 Waring Circle, Worcester, MA 01609)—purchase (portion)—WILSON FREIGHT COMPANY (Wilson) (Debtor in Possession) (640 Northland Blvd., Cincinnati, OH 45240) (Abraham Sack, Assignor). Representatives: James C. Hardman, Suite 2108, 33 N. LaSalle Street, Chicago, IL 60602; and Fritz R. Kahn, Suite 1100, 1660 L Street, NW., Washington, DC 20036. SonS seeks

authority to purchase a portion of the interstate operating rights of Wilson. Richard A. Seder and Norman D. Sirk, stockholders of SonS, seek authority to acquire control of said rights through the transaction. SonS is not a carrier but is affiliated with Kenmore Transportation Co., Inc., a motor common carrier operating under MC-59720. SonS seeks authority to purchase a portion of transferor's authority set forth in Certificate No. MC-13123 and MC-13123 (Sub-Nos. 36, 53, 57, 58, 67, 98, and 103). This authority constitutes package numbers W-4, S-7, and S-8 sold by order of the U.S. Bankruptcy Court. This authority authorizes the transportation of *general commodities*, over a series of regular routes, serving specified intermediate and off-route points within CT, DE, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, TN, VA, WV, and DC; and over irregular routes, *general commodities and specified commodities*, including, but not limited to, paper and paper products, new furniture, iron and steel wire, and flat glass and glass glazing units, within specified points in AR, CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, OK, PA, RI, TN, VT, VA, WV, WI, and DC.

[FR Doc. 82-32337 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

[OP 5-256]

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the preceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been

imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notice within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

If is ordered:

The following applications are approved, subjects to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board
November 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,
Secretary.

Please direct status inquiries to team 5, (202) 275-7289.

MC-FC-81008. By decision of November 12, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to DONALD R. PENICK, doing business as DOUBLE EAGLE TRUCKING CO., of Onalaska, WA, of Certificates Nos. MC-142809, MC-142809 (Sub-No. 1), and MC-142809 (Sub-No. 2), and Permit No. MC-140407 (Sub-No. 1), issued to DONALD PENICK AND HARVEY KEENAN, doing business as DOUBLE EAGLE TRUCKING, of Onalaska, WA, authorizing the following transportation: MC-142809, *shakes, shingles, and ridgetrim*, from those points in WA on and west of U.S. Hwy 97 to those points in CA north of the southern boundaries of Monterey, Fresno, and Inyo Counties.

MC-142809 (Sub-1), of (1) *pulp, paper, and related products*, and (2) *food and related products*, between points in CA, OR, WA.

MC-142809 (Sub-2), of *such commodities* as are dealt in or used by manufacturers and distributors of mattresses, between points in Alameda County, CA, on the one hand, and, on the other, points in OR and WA.

MC-140407 (Sub-1), *paint, dry wall joint compound, paint sundries, and materials* used in the manufacture of paint and dry wall joint compound (except in bulk), (a) between San Carlos, CA, and Kirkland, WA, and (b) from San Carlos, CA, to Portland, OR, and Vancouver, Olympic, Kent, and Tacoma, WA, restricted to the transportation of shipments moving between facilities of

Kelly-Moore Paint Company, Inc., under continuing contract(s) with Kelly-Moore Paint Company, Inc., of San Carlos, CA. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055.

[FR Doc. 82-32336 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** on December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 3, 1982. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40-1160.49. Applications may be protested only on the grounds that applicant is not fit, willing and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of \$10.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the

application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

For the following, please direct status inquiries to Team 1 at 202-275-7992.

Volume No. OP1-205

Decided: November 17, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 164601, filed November 5, 1982. Applicant: ALASKA FREIGHT BROKERS, INC., SR 61243-A, Fairbanks, AK 99701. Representative: Patsy L. Wheatley (same address as applicant), (907) 488-2466. As a broker of *general commodities* (except household goods), between points in the U.S. (including AK and HI).

For the following, please direct status inquiries to Team 5 at 202-275-7289.

Volume No. OP5-258

Decided: November 12, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 138069 (Sub-20), filed November 2, 1982. Applicant: LUCIUS, INC., 8331 Pontiac St., Commerce City, CO 80022. Representative: Lester G. Huskey (same address as applicant), (303) 289-2941. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

between points in the U.S. (except AK and HI).

[FR Doc. 82-32343 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** of December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 1, 1982. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40-1160.49. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of \$10.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new

entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP2-295

Decided: November 18, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 139273 (Sub-7), filed November 12, 1982. Applicant: KINGS COUNTY TRUCK LINES, POB 1016, Tulare, CA 93274. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, 805-872-1106. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of food and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with (a) Safeway Stores, Incorporated, of Oakland, CA, (b) Adohr Farms, A Division of the Southland Corporation, of Santa Ana, CA, (c) Gerber Products Company of Oakland, CA (d) Dairyman's Cooperative Creamery Association of Tulare, CA, (e) California Cheese Company, of San Jose, CA, and (f) Riverbend Products, Inc., of Visalia, CA.

MC 145513 (Sub-19), filed November 10, 1982. Applicant: SERVICE TRANSPORTATION, INC., P.O. Box 732, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343-3071. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under a continuing contract(s) with Palmco, Inc., of Portland, OR.

MC 146853 (Sub-16), filed November 12, 1982. Applicant: FRANK F. SLOAN, d.b.a., HAWKEYE WOODSHAVINGS, Route 1, Runnells, IA 50327. Representative: Richard D. Howe, 600. Hubbell Bldg., Des Moines, IA 50309, 515-244-2329. Transporting *such commodities* as are dealt in or used by

manufacturers and distributors of beer, between St. Paul, MN, Phoenix, AZ, Seattle, WA, Omaha, NE, and points in La Cross County, WI, on the one hand; and, on the other, points in Natrona County, WY.

For the following, please direct status inquiries to Team 1 at 202-275-7992.

Volume No. OP1-206

Decided: November 17, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 27530 (Sub-18), filed November 4, 1982. Applicant: KERRVILLE BUS COMPANY, INC., P.O. Box 712, Kerrville, TX 78028. Representative: Jerry Prestridge, P.O. Box 1148, Austin, TX 78767, (512)-472-8800. Transporting (1) over regular routes, *passengers and their express and newspapers*, between Killeen, TX, and Brenham, TX, from Killeen over U.S. Hwy. 190 to Belton, TX, then over Interstate Hwy. 35 to Temple, TX, then over TX Hwy 36 to Brenham, TX, and return over the same route, serving all intermediate points and serving the Fort Hood Military Reservation, TX, as an off-route points; and (2) over irregular routes, *passengers and their baggage*, in charter operations, between points in Coryell, Bell, Milam, Burleson and Washington Counties, TX, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 134890 (Sub-15), filed November 2, 1982. Applicant: MARION TRANSFER, INC., 3011 NORTH 30th St., Milwaukee, WI, 53210. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203, (414) 273-7410. Transporting *food and related products*, between points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant written request, of paragraphs (2) and (3) of its Permit MC-134890 (Sub-No. 11X) which authorizes the transportation of food and related products, between points in the U.S., under continuing contract(s) with three named shippers.

Note.—The purpose of this application is to convert a portion of applicant's permit No. MC-134890 Sub-No 11x to a Certificate of Public Convenience and Necessity.

MC 140650 (Sub-3), filed November 5, 1982. Applicant: PENINSULAR MEAT CO., INC., 4401 N. Westshore Blvd., P.O. Box 15592, Tampa, FL 33684. Representative: Rudy Yessin, P.O. Drawer B, 113 W. Main St., Frankfort, KY 40602, (502)-227-7326. Transporting *bananas*, between Tampa, FL, Gulfport, MS, Mobile, AL, Charleston, SC, New Orleans, LA, and Morehead City, NC, on

the one hand, and, on the other, points in PA, OH, WV, KY, IN, and VA.

MC 153901 (Sub-3), filed November 5, 1982. Applicant: AIM INDUSTRIES, INC. 330 Manhattan Ave., Jersey City, NJ 07307. Representative: Gerald J. Donovan, 4791 S.W. 82nd Ave., Davie, FL 33328, (305)-434-7621. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between New York, NY, and points in RI, MD, DE and NH.

MC 163831, filed November 8, 1982. Applicant: RAIL-TRAIL CO., 3203 Third Ave., North #301, Billings, MT 59101. Representative: Gene A. Radermacher, (same address as applicant), (406)-245-5132. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between points in MT and WY, (2) between points in SD, ND and MN, (3) between points in WA, ID, OR and MT, and (4) between points in CO, NE and WY, under continuing contract(s) with Burlington Northern Railroad Company.

For the following, please direct status calls to Team 3 (202) 275-5223.

Volume No. OP3-26

Decided: November 17, 1982.

By the Commission, Review Board No. 2, members Carleton, Williams, and Ewing. (Member Ewing not participating.)

MC 1074 (Sub-22), filed November 4, 1982. Applicant: ALLEGHENY FREIGHT LINES, INC., P.O. Box 2080, Winchester, VA 22601. Representative: Francis W. McInerny, 1000 Sixteenth St., N.W., Washington, D.C. 20036, (202) 783-8131. Transporting *general commodities* (except classes A and B explosives and household goods), between points in IL, IN, KY, VA, NJ, NC, TN, DE and WV.

Note.—Applicant intends to tack this authority to its existing regular and irregular route authority.

MC 151215 (Sub-4), filed November 5, 1982. Applicant: FACTORY SERVICES, INC., 624 Kennedy Rd., Lexington, KY 40501. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004, (202) 347-8862. Transporting *waste or scrap materials*, between points in KY, TN, IN, OH, and WV.

MC 151224 (Sub-2), filed November 5, 1982. Applicant: NORTHERN STEEL TRANSPORT CO., a Corporation, 6041 Benore Rd., Toledo, OH 43612. Representative: Michael M. Briley, 300 Madison Ave., 12th Fl. P.O. Box 2088, Toledo, OH 43603, (419) 255-8220. Transporting *general commodities* (except classes A and B explosives,

household goods, and commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 153384 (Sub-2), filed November 5, 1982. Applicant: JOHN C. WARD, Rt 4, Box 331, Newberg, OR 97132. Representative: John C. Ward, (Same address as applicant) (503) 538-5884. Transporting *foundry and steel mill supplies*, between points in OH, UT, CA, OR, WA, IL, PA and TX.

MC 153784 (Sub-2), filed November 5, 1982. Applicant: MANTEK TRUCKING, INC., 168A Amboy Rd., Matawan, NJ 07747. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048, (212) 466-0220. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with American Can Company of Greenwich, CT.

MC 158105 (Sub-2), filed November 5, 1982. Applicant: TIPTON TRUCKING COMPANY, INC., 25 So. Heald St., Wilmington, DE 19801. Representative: David E. Fox, 915 15th St., N.W., Suite 900, Washington, D.C. 20005, (202) 628-9850. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 164344, filed November 4, 1982. Applicant: WIL-PAU, R.R. 2, Wahoo, NE 68066. Representative: James K. Goodding, Box 408, 225 W. Beech, Ceresco, NE 68017, (402) 665-2211. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in Saunders County, NE, on the one hand, and, on the other, points in IA, MO, KS, and CO.

MC 164584, filed November 5, 1982. Applicant: HENRY GLASS & SONS, INC., 900 Marshall St., Bethlehem, PA 18017. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966, (215) 357-7220. Transporting (1) *ores and minerals, clay, concrete, glass or stone products*, between points in Berks, Lehigh, Monroe and Northampton Counties, PA, on the one hand, and, on the other, points in DE, MD, NJ, NY, (2) *ores and minerals*, between points in Warren County, NJ, one hand, and, on the other, points in Berks, Bucks, Lehigh, Montgomery, Monroe, Northampton, Philadelphia, and Schuylkill Counties, PA, and (3) *lumber and wood products*, between points in Northampton County PA, on the one hand, and, on the other, points in CT, DE, MD, MA, NJ, NY, OH, and PA.

MC 164585, filed November 4, 1982. Applicant: TROUT POST AND POLE CO., INC., Box 236, Deer River, MN 56636. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Ten South Fifth St., Minneapolis, MN 55402, (612) 340-0808. Transporting *lumber and wood products, forest products, and pulp and paper products*, between points in MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164594, filed November 5, 1982. Applicant: MARTIN GAS TRANSPORT, INC., P.O. Drawer 191, Kilgore, TX 75662. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW., Suite 500, Washington, DC. 20006, (202) 828-5015. Transporting *ores and minerals, chemicals and related products, and petroleum, natural gas and their products*, between points in TX, LA, AR, OK, KS, MO, IL, TN, MS, AL, GA, and FL. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 3, Room 2158.

MC 164595, filed November 5, 1982. Applicant: BRINSON INDUSTRIAL SALES, INC., 19384 Hillcrest, Livonia, MI 48152. Representative: A. M. Brinson (Same address as applicant), (313) 478-1336. Transporting *hazardous materials*, between points in OH, on the one hand, and, on the other, points in MI, under continuing contract(s) with Elkem Metals Company of Pittsburgh, PA.

Note.—The authority granted herein to the extent it authorizes the transport of hazardous materials is limited in point of time to a period of five (5) years from the date of issuance.

For the following, please direct status inquiries to Team 5 at 202-275-7289.

Volume No. OP5-257

Decided: November 12, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell,

FF-629, filed November 4, 1982.

Applicant: FUTURE WAY, INC., 4395 E. Ayers, Vernon, CA 90023. Representative: John C. Russell, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017, (213) 483-4700. To operate as a *freight forwarder*, in connection with the transportation of *floor coverings*, between points in CA, on the one hand, and, on the other, points in OR, WA, UT, AZ, CO, ID, NV, NM, TX.

MC 110149 (Sub-14), filed November 2, 1982. Applicant: PAN AMERICAN VAN LINES, INC., 18420 So. Santa Fe Ave., P.O. Box 923, Long Beach, CA 90801. Representative: W. C. Fogle (Same address as applicant.) (213) 537-2630. Transporting (1) *rocket engines* and (2) *rocket fuel* between points in the U.S. (except AK and HI). Common control: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 5, Room 2414.

MC 138069 (Sub-19), filed November 2, 1982. Applicant: LUCIUS, INC., 8331 Pontiac St., Commerce City, CO 80022. Representative: Lester G. Huskey (same address as applicant), (303) 289-2941. Transporting *general commodities* (except household goods), between points in the U.S., under continuing contract(s) with United Forwarding, Inc., of Omaha, NE, and Navajo Shippers, Inc., of Denver, CO. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring in 5 years from the date of issuance of the certificate.

MC 138569 (Sub-8), filed October 25, 1982. Applicant: BRAITHWAITE TRUCKING, INC., 3819 Sunset Drive, Rapid City, SD 57701. Representative: Thomas J. Simmons, P.O. Box 480, Sioux Falls, SD 57101, (605) 339-3629. Transporting *coal*, between points in Hot Springs County, WY, on the one hand, and on the other, points in Gallatin and Broadwater Counties, MT.

MC 140498 (Sub-5), filed November 2, 1982. Applicant: BECHEM TRANSPORT, INC., 46 River St. New Haven, CT 06513. Representative: William C. Evans, 1660 L St., NW, Suite 1100, Washington, DC 20036, (202) 452-7430. Transporting *chemicals and related products* between points in the U.S. (except AK and HI).

NOTE.—The purpose of this application is to convert applicant's authority from contract to common.

MC 142698 (Sub-7), filed November 1, 1982. Applicant: B. A. STRICKLAND, 620 Old Highway 99 North, Burlington, WA 98233. Representative: Jim Pitzer, 15 South Grady Way Suite 321, Renton, WA 98055-3273, 206-235-1111. Transporting *general commodities* (except classes A and B explosives, and household goods), between those points

in the U.S. in and west of WI, IL, MO, OK, and TX. (except HI).

MC 155118 (Sub-12), filed November 1, 1982. Applicant: T.D.S. TRANSPORTATION, INC., 1700 S. Wolf Rd., Des Plaines, IL 60018. Representative: Julie L. Roper (Same address as applicant.), (312) 298-8800. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Holiday Inns, Inc., Product Services Division, of Memphis, TN, Allstate Industries, Inc., of Crystal, MN, Eljer Plumbingware, Wallace Murray Corporation, of Pittsburgh, PA, Diversified Products Corp., of Opelika, AL, American Crystall Sugar Company, of Moorhead, MN, and A. Giurlani & Bro., Inc., of Sunnyvale, CA.

MC 164348, filed October 21, 1982. Applicant: BEN TERRY d.b.a. SAMSON EXPRESS, 114 Temescal Circle, Emeryville, CA 94608. Representative: Ben Terry, (same address as applicant), (415) 655-7730. Transporting (1) *automobile parts and engines*, and (2) *alcoholic beverages*, between points in Santa Clara County, CA, on the one hand, and, on the other, points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-32344 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01

[Permanent Authority Volume No. OP2-296]

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification

The following grant of operating right authority is republished by order of the Commission to indicate a broadened grant of authority over that previous notice in the **Federal Register**.

An original and one copy of an appropriate petition for leave to intervene, setting forth in detail the precise manner in which petitioner has been prejudiced, must be filed with the Commission within 30 days after the date of this **Federal Register** notice.

By the Commission.
Agatha L. Mergenovich,
Secretary.

MC 11592 (Sub-34) (Republication) filed April 14, 1982, published in the **Federal Register** issue of June 2, 1982, and republished this issue. Applicant: BEST REFRIGERATED EXPRESS, INC., P.O. Box 7365, Omaha, NE 68107. Representative: Rick A. Rude, Suite 611,

1730 Rhode Island Ave., NW., Washington, D.C. 20036. A decision by the Commission, *Division 2*, Acting as an Appellate Division, Commissioners Andre, Gilliam, and Taylor, decided October 13, 1982 and served October 19, 1982, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *general commodities*, between Batavia, IL, and Irvington, NE, on the one hand, and, on the other, points in the United States; that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to include authority to transport classes A and B explosives, commodities in bulk, household goods, and to serve Alaska and Hawaii.

[FR Doc. 82-32340 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30052]

Rail Carriers; Lorain & West Virginia Railway Company—Abandonment Exemption—In Lorain County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505 the Interstate Commerce Commission exempts the abandonment by Lorain & West Virginia Railway Company of a 21.17 mile rail line between Wellington and South Lorain in Lorain County, OH, from the requirements of 49 U.S.C. 10903 *et seq.*

DATES: This exemption will be effective on December 27, 1982. Petitions for reconsideration must be filed by December 16, 1982, and petitions for stay must be filed by December 6, 1982.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, 12th and Constitution Ave., NW., Washington, D.C. 20423.

(2) Petitioner's representative: Angelica D. Lloyd, 8 North Jefferson Street, Roanoke, VA 24042.

Pleadings should refer to Finance Docket No. 30052.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS

Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—Toll free for outside the DC area.

Decided: November 18, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-32339 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30026]

Rail Carriers; Norfolk and Western Railway Company—Abandonment Exemption—Russell Street Spur Track in Wayne County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.* abandonment by the Norfolk and Western Railway Company of 0.88 miles of line in Wayne County, MI, subject to standard labor protection provisions.

DATES: this exemption shall be effective on December 27, 1982. Petitions to stay the effectiveness of this decision shall be filed by December 6, 1982. Petitions for reconsideration must be filed by December 16, 1982.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Robert J. Cooney, 1667 Railway Exchange Building, 611 Olive Street, St. Louis, MO 63101.

Pleadings should refer to Finance Docket No. 30026.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—Toll free for outside the DC area.

Decided: November 18, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32342 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-166]

Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice opening proceeding.

SUMMARY: This proceeding was instituted by a notice opening the proceeding to request comments, served October 29, 1982, and published at 47 FR 49481 (November 1, 1982). A 30-day comment period was provided. The purpose of this document is to give notice that the time for filing comments has been extended 45 days.

DATES: Comments must be received by January 15, 1983.

ADDRESSES: Send comments (original and 10 copies) to: Ex Parte No. MC-166, Room 2139, Interstate Commerce Commission, Office of Proceedings, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Leonard L. Arnaiz, (202) 275-7952

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: The National Small Shipments Traffic Conference (NSSTC) and the Drug and Toilet Preparation Traffic Conference (DTPTC), jointly, and the American Retail Federation (ARF), filed written requests that the time for filing comments in this proceeding be extended until January 15, 1983 and December 27, 1982, respectively. Similarly, the American Trucking Associations, Inc. (ATA) has requested a 60-day extension of time for the filing of comments. Central States Motor Freight Bureau, Inc., Middlewest Motor Freight Bureau, and Niagara Frontier Tariff Bureau, Inc. have filed communications supporting the ATA's request for a 60-day extension. NSSTC and DTPTC, and ATA contend that they need additional time to gather necessary information for preparing their comments. ARF contends that it needs an extension so that it can consider the issues addressed in this proceeding at its Transportation Committee meeting to be held December 6, 1982.

The 45-day extension of time for the filing of comments in this proceeding, requested by NSSTC and DTPTC, is warranted. The extension should provide adequate time for all parties to prepare data and comments without unduly delaying the proceeding. The 60-day extension requested by ATA and supporting parties is, on the other hand, not warranted and will be denied. In view of the 45-day extension granted, ARF's request that the time for filing comments be extended until December 27, 1982, will be denied. Any further requests for an extension of time for the filing of comments in this proceeding will be denied.

It is ordered:

NSSTC and DTPTC's joint request for an extension of time for filing of comments in Ex Parte No. MC-166 is granted. Comments in this proceeding must be received by January 15, 1983. ATA's and supporting parties' requests for a 60-day extension of time for filing of comments in this proceeding and ARF's request for an extension until December 27, 1982, are denied.

Decided: November 19, 1982.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32345 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

Handling of Insurance Filings; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Notice; correction.

SUMMARY: At 47 FR 51630, November 16, 1982 the Commission published a notice which stated that the Maintenance of the Commission's Carrier Security and Process Agents Records System had been contracted to Equipment Interchange Association of Alexandria, VA. The notice contained an incorrect telephone number. The correct numbers are 703-823-5986 and 703-823-5987.

EFFECTIVE: November 8, 1982.

FOR FURTHER INFORMATION CONTACT:

Edward C. Fernández, 202-275-7591.

Dated: November 17, 1982,

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32403 Filed 11-24-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-113 and 114 (Preliminary)]

Carbon Steel Wire Rod From Brazil and Trinidad and Tobago

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil (investigation No. 731-TA-113 (Preliminary)) and Trinidad and Tobago (investigation No. 73-TA-114 of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which are alleged to be sold, or likely to be sold, in the United States at less than fair value (LTFV)).²

Background

On September 30, 1982, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Atlantic Steel Corp., Continental Steel Corp., Georgetown Steel Corp., Georgetown Texas Steel Corp., and Raritan River Steel Co., domestic producers of carbon steel wire rod, alleging that imports of carbon steel wire rod from Brazil and Trinidad and Tobago are being, or are likely to be, sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). Accordingly, effective September 30, 1982, the Commission instituted preliminary antidumping investigations under section 733(a) of the Act (19 U.S.C. section 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from Brazil and Trinidad and Tobago.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission,

¹ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i), 47 FR 6190, Feb. 10, 1982).

² Commissioner Stern also determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly LTFV imports of carbon steel wire rod from Trinidad and Tobago.

Washington, D.C., and by publishing the notice in the *Federal Register* of October 14, 1982 (47 FR 45980). The Conference was held in Washington, D.C., on October 25, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of Chairman Eckes and Commissioner Haggart

Based on the record in these investigations, we conclude that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of carbon steel wire rod from Brazil, which are allegedly sold at less than fair value. We also find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of carbon steel wire rod from Trinidad and Tobago³, which are allegedly sold at less than fair value.

In the following analysis, we first define the domestic industry and then examine the condition of the domestic industry in terms of the relevant economic indicators. Finally, we examine the causal relationship between the condition of the domestic industry and the allegedly dumped imports on a country by country basis.

Domestic industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." Section 771(10) defines "like product" as a product which is like, or in the absence of like, most similar in characteristics and uses with the article under investigation.

Both imported and domestic carbon steel wire rod are hot-rolled, semifinished, coiled products of solid, round cross section, not under 0.20 inch nor over 0.74 inch in diameter which are produced in a variety of different grades, sizes and qualities.

There are three types of carbon steel wire rod based on carbon content: low, medium-high, and high carbon steel wire rod. Each of these types has distinct characteristics and uses.⁴ Based on the

information now available, we conclude that low, medium-high, and high carbon steel wire rod can be considered separate like products.⁵ However, domestic producers were not able to break out their data on the basis of low, medium-high, and high carbon steel wire rod because of the way in which their records are kept.⁶ Since available data do not permit the identification of these separate like products, the effect of the imports allegedly sold at less than fair value is assessed under section 771(4)(D) of the Act by examination of the production of the narrowest group which includes the like products for which the necessary information can be provided. The narrowest group of products which includes the like products is all carbon steel wire rod. Thus, the domestic industry for purposes of these preliminary investigations consists of the producers of all carbon steel wire rod.

Condition of the domestic industry

The domestic industry as a whole is experiencing problems.⁷ The industry's financial performance, production, shipments, capacity utilization, and employment levels all declined during the period under investigation. The industry has experienced its most severe decline in these indicators in the most recent period for which data are available (January-June 1982).

Aggregate production decreased from 5.3 million tons in 1979 to 4.7 million tons in 1981. Production for the most recent period of January-June 1982 was 1.8 million tons as compared to 2.5 million tons in the corresponding period in 1981, a decrease of approximately 28 percent. There was a similar decline in aggregate shipments during 1979-1981.

the Commission that they could not break out their data on the basis of cast and rimmed wire rod.

⁵ We note that although counsel for Iscott, the wire rod producer in Trinidad, has argued that Iscott makes a higher quality cast wire rod, there was no argument that its wire rod is a separate like product.

⁶ See *Carbon Steel Wire Rod from Belgium and France*, Inv. Nos. 701-TA-148 and 150, hearing transcript at p. 122, which has been made a part of this record. The domestic producers gave the Commission general estimates of low, medium-high, and high carbon steel wire rod production, but these estimates were not based on actual figures.

⁷ The domestic producers of carbon steel wire rod can be divided into two groups: the integrated producers and the nonintegrated producers. The record in this investigation shows that the nonintegrated producers are gaining market share at the expense of the integrated producers. The integrated producers, as compared to the nonintegrated producers, have shown much weaker indicators of economic performance during the period under investigation. However, during the period January-June 1982, both the integrated and the nonintegrated producers experienced downturns in all economic indicators at the same time that imports increased.

This decline became somewhat sharper in the first half of 1982 as aggregate shipments declined by 31 percent as compared to the corresponding period in 1981. Capacity utilization for the industry fell from 87.7 percent in 1979 to 60.5 percent in the first half of 1982.⁸

The industry has suffered declining employment levels throughout the period with significant declines in January-June 1982. Employment decreased by 33.5 percent during January-June 1982 while the number of hours worked declined by a commensurate 33.1 percent, as compared to the corresponding period in 1981. During the same period, the industry has managed to decrease its unit labor costs from \$60 per ton to \$55 per ton.

Twelve firms, accounting for about 90 percent of total U.S. producers' shipments of carbon steel wire rod in 1981, provided profit and loss figures. Aggregate industry profit fell from \$17.9 million in 1979 to an operating loss of \$40.2 million in January-June 1982.

Carbon Steel Wire Rod from Brazil

We determine that there is a reasonable indication that allegedly dumped Brazilian imports have caused material injury to the domestic carbon steel wire rod industry. Our decision is based primarily on the sharp increase in imports from Brazil in the first half of 1982, evidence of underselling, and lost sales to Brazilian imports.

There were negligible imports of carbon steel wire rod from Brazil in 1979 and no imports in 1980. Imports from Brazil reached 32,579 tons in 1981, all of which entered in the last half of the year. For the first six months of 1982, these imports increased to over 69,000 tons, double the 1981 levels. Brazil's entry into the U.S. market and its steadily increasing market share coincide with the decline in U.S. apparent consumption. Imports from Brazil have increased as a share of apparent U.S. consumption from less than 0.05 percent in 1979 to 3.3 percent in January-June 1982, while such imports have increased as a share of U.S. noncaptive consumption from less than 0.05 percent in 1979 to 5.0 percent in January-June 1982.⁹

⁸ The capacity utilization of the integrated producers fell from 98.5 percent in 1979 to 54.4 percent in January-June 1982 despite the closing of all wire rod facilities at Jones & Laughlin and the closing of certain rod mills operated by U.S. Steel. Concurrently, the capacity utilization of the nonintegrated producers fell from 75.6 percent to 64.9 percent.

⁹ Domestic shipments are divided into transfers or sales to related wire drawers (captive shipments) and sales to non-related wire drawers (commercial

³ Hereinafter referred to as Trinidad.

⁴ See Report at A-4. Within the low carbon category, continuous cast and rimmed wire rod can be distinguished to some degree on the basis of characteristics and uses. Since cast rod is substitutable for rimmed rod in all but five percent of the end use applications, we conclude that cast rod is like rimmed rod and domestic producers of both products should be considered as part of the domestic industry. See Commission Report at A-4. The majority of the domestic producers informed

The best pricing data is available for standard quality wire rod, AISI designation 1008, the most fungible product in the market. Pricing data available for imports from Brazil indicate a steady downward trend during the period under investigation. Prices of Brazilian rod decreased by 11.5 percent from the third quarter of 1981 to the second quarter of 1982. During the same period, prices for comparable domestic rod declined by only 8.5 percent. Direct pricing comparisons between domestic rod and Brazilian wire rod indicate that Brazilian rod undersold domestic rod in two of the four quarters for which information was available.

Lost sales information also indicates that wire rod from Brazil is causing injury to the domestic industry. During the period January 1981 through June 1982, the domestic industry alleged 27 separate instances of lost sales to the imported product. The Commission staff was able to verify that in 14 of those instances, the purchaser bought imported rod from Brazil primarily because of its lower price. These lost sales amounted to over 24,000 tons, or about 25 percent of the imports reported for the period January 1981 to June 1982.

Carbon Steel Wire Rod from Trinidad

We determine that there is a reasonable indication that allegedly dumped imports from Trinidad have caused material injury to the domestic carbon steel wire rod industry. Our decision is based primarily on the sharp increase in imports from Trinidad since their entrance in the market in the last quarter of 1981, preliminary indications of underselling in the U.S. market, and confirmed lost sales because of price.

Production of carbon steel wire rod in Trinidad began in July 1981. For the remainder of that year, Trinidad shipped 6,010 tons of wire rod to the United States. In January-June 1982, imports from Trinidad increased to 19,645 tons, more than triple the 1981 level. Additionally, an analysis of wire rod shipments from Trinidad on a quarterly basis indicates that such imports increased steadily from the third quarter of 1981 to the third quarter of 1982. This significant increase comes at a time when domestic consumption has declined precipitously. Imports from

shipments). Apparent U.S. consumption is calculated by adding U.S. producers' total shipments (i.e., commercial shipments and captive shipments) and imports for consumption, and by subtracting U.S. exports from that sum. Apparent U.S. noncaptive consumption is calculated by adding U.S. producers' commercial shipments and imports for consumption, and by subtracting U.S. exports from that sum.

Trinidad have increased as a share of apparent U.S. consumption from 0.1 percent in 1981 to 1.0 percent in January-June 1982, while such imports increased as a share of apparent U.S. noncaptive consumption from 0.2 percent in 1981 to 1.4 percent in January-June 1982.¹⁰

For purposes of this preliminary investigation, the limited pricing data on wire rod from Trinidad provide a reasonable indication of underselling.¹¹ A comparison of the weighted-average-delivered prices paid by purchasers of standard quality low-carbon steel wire rod from the U.S. with those by purchasers of comparable wire rod from Brazil and Trinidad reveals that the wire rod from Trinidad was, on average, the lowest priced of the three.¹² In both quarters for which data are available, wire rod from Trinidad undersold the domestic product.¹³ Additionally, information indicates that prices of wire rod from Trinidad have declined in each successive quarter in which such rod was sold in the U.S. market. Finally, the Commission staff confirmed two lost sales to imports from Trinidad on the basis of price.

Addendum to Views of Chairman Eckes and Commissioner Haggart

These comments relate to points raised in Commissioner Stern's views, which begin on the opposite page.

We note that Commissioner Stern's views in these investigations include comments on other investigations which the Commission has officially terminated,¹⁴ namely investigations regarding certain carbon steel products from Belgium, France, Italy, Luxembourg, the United Kingdom and the Federal Republic of Germany.

A majority of the Commission determined that this agency had legal

authority to terminate those investigations (19 U.S.C. 1671c(a)), and concluded that such action was consistent with the public interest and sound, responsible agency practice. Because these carbon steel subsidy investigations were officially terminated, we have not issued views explaining our votes in those investigations, which were announced prior to the terminations.

Any reference whatsoever to our supposed rationale for deciding those investigations is entirely speculative and conjectural. The views of Commissioner Stern on the carbon steel cases stand alone. In our opinion, they should not be accorded legal significance, and thus are of no precedential value.

Views of Commissioner Paula Stern

Introduction

I determine, pursuant to section 731(a) of the Tariff Act of 1930 (hereinafter the Act),¹⁵ that there is a reasonable indication that an industry in the United States is materially injured and threatened with material injury by reason of alleged less-than-fair-value imports of carbon steel wire rod from Brazil and Trinidad and Tobago.

The reasons for my determination in these two cases closely parallel my views in the recent final countervailing duty investigations involving imports of carbon steel wire rod from Belgium and France.¹⁶ In brief, the domestic industry producing carbon steel wire rod is suffering severe injury as demonstrated by virtually all economic indicators at the Commission's disposal. The situation of this industry is rapidly deteriorating. The subject imports from Brazil and Trinidad and Tobago, allegedly sold at less than fair value, are underselling domestically-produced wire rod and have rapidly captured a significant share of apparent U.S. consumption. Although our data is incomplete at this stage of our investigation, the best information available to us also provides a reasonable indication that the ability

¹⁰ See Report at A-30. See Footnote 9.

¹¹ Much of the information on prices is derived from information obtained during Investigations Nos. 701-TA-148-150, *Carbon Steel Wire Rod from Belgium, Brazil and France*. In response to questionnaires sent to purchasers in those investigations, the Commission also received some pricing information on wire rod from Trinidad.

¹² An analysis of customs unit values also indicates that the imports from Trinidad have lower customs values than those from Brazil. See Report at A-37.

¹³ Counsel for Trinidad has provided the Commission with pricing information which suggests that the wire rod from Trinidad oversells its U.S. competition in the Gulf area. The Commission has been unable to determine whether pricing trends by regional areas exist or to examine fully the impact of imports in other areas of the country during the course of this preliminary investigation. If this investigation returns for a final determination, we will explore this question more fully.

¹⁴ See 47 FR 49104 (1982) and Commission Notice of Termination issued Nov. 10, 1982 (to be published in the Federal Register).

¹⁵ 19 U.S.C. 1673(a).

¹⁶ These investigations were terminated by a 2-1 vote of the Commission after the Commission had reached a unanimous negative final determination with respect to imports from Belgium (Inv. No. 701-TA-148) and an affirmative determination with respect to imports from France (Inv. No. 701-TA-50). I dissented from the Commission majority's vote to terminate these investigations because in my view the withdrawal of the petitions by petitioners in those cases after the Commission's vote is not authorized by the statute. See Action Request INV-82-259, Terminating Inv. Nos. 701-TA-148/150(F), and accompanying memorandum of Commissioner Stern, CO2-F-78.

and likelihood of the producer in Trinidad and Tobago to increase its exports to the United States poses a reasonable indication of threatened material injury that is both real and imminent.

For purposes of this preliminary investigation, the effect of the subject imports from Brazil and Trinidad and Tobago must also be considered in light of the impact of other unfairly traded imported carbon steel wire rod from France¹⁷ and Venezuela.^{18 19} Preliminary data indicate that imports from each of these countries compete in the same market, are directed to the same end-users, pass through the same channels of distribution, and are priced similarly.²⁰ Furthermore, these cases on a narrowly defined product line are set against the overall plight of the entire steel industry in the United States. I have discussed these subjects in detail in my "Views" written in support of my determinations in *Certain Carbon Steel Products from Belgium, France, Italy, Luxembourg, the United Kingdom, and the Federal Republic of Germany*, which were decided by the Commission on October 15, 1982. I am, therefore, incorporating those "Views" into the present ones at the end.

The Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." Section 771(10) defines "like product" as a product which is like, or in the absence of like, most similar in characteristics and uses with the article under investigation.

Carbon steel wire rod is a hot-rolled, semifinished, coiled product of solid, round cross section, not under 0.20 inch nor over 0.74 inch in diameter. It is produced in a variety of different grades, sizes and qualities.

¹⁷ On September 27, 1982, the Department of Commerce published a final determination that imports of carbon steel wire rod from France are benefitting from subsidies. See 47 FR 42422.

¹⁸ On July 23, 1982, the Department of Commerce published a preliminary determination that imports of carbon wire from Venezuela are being sold in the United States at less than fair value. See 47 FR 31910.

¹⁹ An earlier countervailing duty case involving imports of carbon steel wire rod from Brazil (Inv. No. 701-TA-149, Final), was suspended by the Commission on October 6, 1982, 47 FR 44166, pursuant to an agreement between the Department of Commerce and the government of Brazil. The suspension agreement is based on the institution of an export tax by the government of Brazil which effectively negates the subsidy originally found to be conferred on Brazilian producers' and exporters' shipments of the subject merchandise.

There are three categories of carbon steel wire rod based on carbon content: low, medium-high, and high carbon steel wire rod. Each of these categories has distinct characteristics and uses. Virtually all of the wire rod imported from Brazil and Trinidad and Tobago is low-carbon rod,²¹ whereas the domestic industry produces all three categories. Carbon steel wire rod can also be distinguished on the basis of the production process. There are two methods of making wire rod: the ingot method and the continuous casting method.²² Wire rod produced by the ingot process may be "killed" (deoxidized) to retard the evolution of gases and segregation of residuals, "rimmed," in which the gas evolution and residual segregation are allowed to occur, or "semi-killed" in which the rod is killed to various degrees. Steel wire rod made by the continuous casting process is, by necessity, "killed."

During the rimming process the residuals in rod are reduced, making the rod very soft and ductile. Rimmed rod is easier to draw into such types of wire, as very fine mesh, because of its ductile qualities.

Killing the steel causes the residuals to be scattered throughout the rod, generally making it stronger (more tensile).²³ Although steel made by the continuous casting method is always killed, the amount of residuals can also be controlled by the kinds of scrap used to make the steel. The use of certain kinds of scrap can result in very low amounts of residuals and, therefore, greater ductility. With this control of the casting process, cast wire rod can be substitutable for rimmed rod in all but 5 percent of the cases, e.g., fine wire mesh.²⁴

Certain wire drawers prefer rimmed steel because of its greater ductility. Rimmed wire rod also provides a greater yield and results in less die wear for the drawer. However, rimmed steel usually sells for \$25 to \$35 higher than cast rod. Although the control of residuals during the casting process increases the cost of cast rod, the cost of cast rod normally is still lower than the cost of rimmed rod, especially when scrap prices are low, as they are now. If the cast rod is sold for a lower cost, wire drawers will substitute cast rod for rimmed rod. Since cast rod is substitutable for rimmed rod in all but 5 percent of the cases and is substituted

for rimmed rod if it is sold at a low enough price, which is the normal practice, I conclude that cast rod is like rimmed rod and producers of both products should be considered in the domestic industry.

Although low carbon steel wire rod could be considered a separate like product, domestic producers in response to questionnaires were not able to break out their data on the basis of low, medium-high and high carbon steel wire rod because of the way in which their records are kept.²⁵ I, therefore, conclude under Section 771(D)(4) of the Act that the domestic industry consists of the producers of all carbon steel wire rod.

Condition of the U.S. Industry

The domestic industry as a whole is clearly experiencing problems. The industry's financial performance, production, shipments, capacity utilization, and employment levels all declined during the period under investigation. Additionally, the industry has experienced its most severe decline in the most recent period, January-June 1982.

In this investigation, the domestic producers of carbon steel wire rod were divided into two groups: The integrated producers and the nonintegrated producers. It is readily apparent that the nonintegrated producers are gaining market share at the expense of the integrated producers. The integrated producers have shown much weaker indicators of financial health for the period under investigation. However, January-June 1982 witnessed the nonintegrated producers joining the integrated producers in their financial straits. The integrated producers have reported net operating losses for every period since 1979 whereas the nonintegrated producers were in the black until January-June 1982. Aggregate industry profit fell from 17.9 million dollars in 1979 to an operating loss of \$40.2 million in January-June 1982. During this time the net operating profit of the nonintegrated producers fell from a high of \$37.8 million in 1979 to a net operating loss of \$4 million in the first half of 1982.

Aggregate production decreased from 5.3 million short tons in 1979 to 4.7 million tons in 1981 and further dropped from 2.5 million in January-June 1981 to 1.8 million or by approximately 28 percent for the comparable period in

²⁴ See Commission Report at A-3.

²⁵ See Hearing Transcript, Inv. No. 701-TA-48 and 50, Carbon Steel Wire Rod from Belgium and France, at p. 122. The domestic producers gave the Commission general estimates of low, medium-high, and high carbon steel wire rod production, but these estimates were not based on actual figures. The majority of the domestic producers also informed the Commission that they were unable to break out their data on the basis of cast and rimmed wire rod.

²⁰ Should these cases return for a final investigation, I would expect the Commission to gather more detailed information on the impact of imports from these countries on the domestic industry. The question of whether cumulation of these imports at a final investigation would be appropriate, is, therefore, still open.

²¹ See Report, p. A-4.

²² See Commission Report at p. A-1.

²³ See Commission Report at A-3.

1982. The decline in aggregate shipments was exactly the same in the 1979-1981 period and somewhat sharper in the first half of 1981 compared to the first half of 1982.

Capacity utilization fell from 87.7 percent in 1979 to 60.5 percent in the first half of 1982. The capacity utilization of the integrated producers fell from 98.5 percent in 1979 to 54.4 percent in January-June 1982 despite the closing of all wire rod facilities at Jones & Laughlin and the closing of several mills operated by U.S. Steel. Simultaneously, the capacity utilization of the nonintegrated producers fell from 75.6 percent to 64.9 percent.

The industry has suffered declining employment levels throughout the period with the January-June 1982 period having the most devastating declines. In this most recent period, employment decreased by 33.5 percent while the number of hours worked declined by a commensurate 33.1 percent. During the same period the industry has managed to decrease its unit labor costs from \$60 per ton to \$55 per ton.

Brazil

A. Imports ²⁶

Imports of carbon steel wire rod from Brazil were minimal prior to the last half of 1981, when they suddenly rose to 33,000 tons, or 4.3 percent of total imports. In the first six months of 1982, imports from Brazil have surged to 69,000 tons, and Brazil has captured over 18 percent of the import market in less than two years. As a ratio of apparent U.S. consumption, imports of carbon steel wire rod from Brazil have increased from 0.6 percent in 1981 to 3.3 percent in January-June 1982.²⁷ When compared to apparent non-captive U.S. consumption, the ratio rises to 5 percent.²⁸

B. Pricing and Lost Sales

The U.S. producer price index for low-carbon steel wire rod increased about 40 percent from 1979 to the third quarter of 1981. The price index has since leveled off, coinciding with the rapid increase in Brazilian imports.

Several different methods of comparing prices of domestically produced and imported carbon steel wire rod were used in this investigation.²⁹ In two of these

comparisons, no significant underselling was reported by Brazilian imports. When the Commission compared prices of U.S.-produced wire rod in a given period with prices of imports delivered in the following calendar quarter, however, the results were markedly different. Prices of wire rod imported from Brazil and reported in the January-March and April-June quarters were significantly below average domestic producers' prices in the preceding periods.³⁰ For purposes of this preliminary investigation, these margins of underselling support a finding that there is at least a reasonable indication of price suppression caused by the Brazilian imports.

The Commission staff was able to confirm 20 instances of lost sales due to imported wire rod from Brazil out of 25 allegations checked. Of these lost sales, 14 of these purchases, accounting for over 20 percent of wire rod imports from Brazil since 1980, were because of a lower price offered by the importer.

Trinidad and Tobago

A. Imports ³¹

Imports of carbon steel wire rod from Trinidad and Tobago began in the fourth quarter of 1981. In the first three quarters of 1982, these imports amounted to 33,826 tons and have increased in each quarter.³² As a ratio of apparent non-captive U.S. consumption, imports from Trinidad have rapidly grown to 1.4 percent.

All of these imports are produced by ISCOTT, a recently opened facility that utilizes the most modern continuous casting production techniques.³³ During the period January-June 1982, ISCOTT's wire production facilities were operating at only 29 percent of capacity. While counsel for ISCOTT has cautioned that high capacity utilization rates cannot be expected for many years, it is obvious that a higher ratio of utilization must be achieved in the near future if the firm is to remain solvent. It is likely that increased production by ISCOTT will result in a higher level of exports to the United States, although the exact amount of any such increase could only be the subject of speculation at this point.³⁴

²⁶ The actual figures are confidential; see p. A-35 of the Report.

²⁷ See table 17 of the Report at p. A-27.

²⁸ *Id.*

²⁹ See Report at p. A-25.

³⁰ In this context, it should be noted that one of Trinidad's alternative export markets—the European Community—also is suffering from severe overcapacity in its carbon steel wire rod production facilities, and is unlikely to be in a position to absorb increasing imports of these products in the near future.

B. Prices and Lost Sales

Prices reported by the importer of wire rod from Trinidad have declined in each of the four quarters in which sales have been made.³⁵ While pricing data is incomplete, the best information available to the Commission reveals that weighted average delivered prices of imports were below U.S. producers' prices in January-March and in April-June of this year. When comparisons are made of U.S. prices with prices of imports delivered in the following quarter, these ratios of underselling by wire rod imported from Trinidad increase for the respective periods. Clearly, there is a reasonable indication that imports from Trinidad may be having a suppressing effect on the domestic industry's prices.

Only six allegations of lost sales to wire rod from Trinidad were submitted to the Commission. Five of these allegations were confirmed. Two of these were confirmed because of price, although other factors may have influenced the purchaser to buy wire rod from Trinidad.³⁶

Conclusion

I determine that there is a reasonable indication of material injury to the domestic industry by reason of imports from Brazil and Trinidad and Tobago, and that with respect to imports from Trinidad, there is a real and imminent threat that this injury will continue in the near future.

The surge of allegedly less-than-fair-value imports from both Brazil and Trinidad and Tobago has been particularly harmful to the domestic industry. Given the competitive nature of the market, the underselling by the imported products which we have found is likely to have a suppressing effect on the domestic industry's prices. The record in this preliminary investigation provides a reasonable indication that imports from both Brazil and Trinidad and Tobago have increased their market share by underselling their domestic counterparts. Moreover, the recent rapid growth of imports from Trinidad represents a real threat of increasing levels of imports in the immediate future.

Against this background, integrated and non-integrated wire rod producers are now operating in the red.

³⁵ See Report at p. A-34.

³⁶ Counsel for ISCOTT argued at the Preliminary Conference that the superior quality of their wire rod was the primary competitive factor accounting for ISCOTT's marketing success in the United States. If this case returns for a final investigation, the relationship between price and perceived quality differences will be a significant issue.

²⁶ See Table 17 at A-27 of the Report.

²⁷ See Table 18 at p. A-30 of the Report.

²⁸ *Id.*

²⁹ See Discussion of prices at pp. A-31-39 of the Report.

Substantial numbers of workers are unemployed and facilities are idle. These problems are becoming more severe. Consumption dropped by over 28 percent in the first half of 1982 as compared to the corresponding period in 1981.³⁷ Moreover, the impact of the subject imports on the producers of carbon steel wire rod must be viewed in light of the overall conditions of the domestic carbon steel industry. These and other considerations are discussed below in my views in the recently terminated investigations concerning *Certain Carbon Steel Products from Belgium, France, Italy, Luxembourg, the United Kingdom, and the Federal Republic of Germany*.

[Investigations Nos. 701-TA-86, 92, 93, 94, 96, 97, 101, 104, 105 109, 117, 119, 121, 123, 124, and 128 (Final)]

Certain Carbon Steel Products from Belgium, France, Italy, Luxembourg, the United Kingdom, and the Federal Republic of Germany

Views of Commissioner Paula Stern

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Appendix A. Definition and Condition of the Domestic Industries

Appendix B. Memorandum on Termination of the Investigations

I. Introduction

On October 15, 1982, the U.S. International Trade Commission made its determinations in sixteen countervailing duty investigations of five carbon steel products from six European nations. I joined the Commission majority in eleven of these determinations. In the other five cases, I cast minority votes. These Views are presented in accordance with section 705(d) of the Tariff Act of 1930³⁸ which states:

(d) Publication of Notice of Determinations.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based and it shall publish notices of its determination in the Federal Register.

I made affirmative determinations in the following nine cases: hot-rolled carbon steel sheet and strip from Belgium, France, and Italy; cold-rolled carbon steel sheet and strip from France, and Italy; carbon steel structural shapes from Belgium, France and the United Kingdom; and hot-rolled carbon steel bar from the United Kingdom. I was joined by my three colleagues in each of these affirmative findings.

In the following seven cases, I made negative determinations: hot-rolled carbon steel plate from Belgium, the United Kingdom, and the Federal Republic of Germany; hot-rolled carbon steel sheet and strip from the Federal Republic of Germany; cold-rolled carbon steel sheet and strip from the Federal Republic of Germany; and carbon steel structural shapes from Luxembourg and the Federal Republic of Germany. In the German hot-rolled plate and cold-rolled sheet cases, I was joined by Chairman Eckes and Commissioner Haggart to form a Commission majority in those negative findings. Commissioner Haggart also shared my negative determination on German hot-rolled sheet and strip.

I have been able to join my colleagues in an assessment of the condition of the industries defined by the five carbon steel product lines before us in this investigation and will not repeat that here.³⁹ All five product lines are experiencing severe problems reflected in virtually all the economic indicators and other information the Commission compiled. The critical questions of these cases, rather, turn on how to analyze the causes of this injury: the role of margins analysis, the treatment of *de minimis* subsidies, the appropriateness of cumulation, and the usefulness of lost-sales data. However unified these votes may seem in their totality, there are important differences within the Commission on the legal and analytical framework, and consequently the analysis of the individual cases.

Subsidy Analysis.—These cases were brought under the countervailing duty statute, section 701 of the Tariff Act of

1930. This law is designed to remedy material injury caused or threatened to an industry in the United States caused by a potentially unfair trading practice, subsidization. If subsidies do not cause material injury to an industry of another country, they are not an unfair act and are a matter for the domestic economic policy of that country.

If there is no unfair practice, as in the four cases in which I made negative determinations, providing relief falls outside the logic of the law as there are no unfairly traded imports. For relief from imports which are fairly traded, a petitioner must file under section 201 of the Trade Act of 1974 and meet the more stringent standards of that law.

De Minimis Subsidies.—Three of the present cases, where Commerce has found subsidies to be zero but continued the investigations anyway, present rather extreme examples. The Commission must decide whether an unfair practice has resulted in injury to the U.S. industry. The magnitude of the potentially unfair practice has been evaluated at zero. To find in the affirmative in such a situation ignores the effect of the practice in question and thus would violate the statutory requirement for a causal nexus between injury to a U.S. industry and an unfair practice. No better example could be constructed to demonstrate the desirability of "margins analysis" which helps evaluate the connection between a potentially unfair activity, such as subsidization or dumping, and its impact on a domestic industry. Though an unquestioned practice at the Commission before 1980, such "margins analysis" has been the subject of much recent controversy at the Commission. These cases presented the first occasion where it has made a difference in Commission determinations whether the Commission considered or ignored the role of the subsidies in causing injury. For this reason I have attempted to treat the subject in exhaustive detail in my views.

Cumulation.—Margins analysis is not the sole basis for examining causality in countervailing duty cases. Sometimes imports from several sources, each of which taken alone may not be causing material injury, when taken in combination do cause material injury. The long-established, discretionary practice for dealing with such situations is "cumulation." Because some of the present cases include imports that when taken alone could not possibly be causing material injury, I have in each such situation considered the wisdom of cumulating the impact of those imports with the others in that product line.

³⁷ See Report at p. A-16.

³⁸ 19 U.S.C. 1671d(d). See also 19 U.S.C. 1671d(c)(2).

³⁹ Footnote 39 referred to draft Views on the Definition and Condition of the Domestic Industries which have been omitted from Appendix A for the sake of brevity.)

Lost Sales.—Another subject regularly a part of any examination of causality is the information on sales lost by the domestic industry to potentially unfairly traded imports. Such information is important, but may be misleading.

All of these issues on causality are treated in these views to establish the appropriate framework for the discussion of the merits of each case. My views conclude with an overview of what this investigation has told us about the role of the subsidized imports in the U.S. steel industry.

II. Statutory Standards and Causality

A. Margins Analysis: An Important Tool

The issue of what information the Commission should consider when determining causality in countervailing duty investigations has now come to a head in a final case. Because the outcome on the matter of margins analysis was critical to certain determinations in this case, the causation standard in sections 701 and 705 of the Act was not surprisingly among the issues most hotly contested during the course of these investigations. The conceptual importance of the subject, as well as my profound disagreement with the apparent views of my colleagues, prompts me to expand on the views I first presented in *Certain Steel Wire Nails from the Republic of Korea* (1982),⁴⁰ developed in *Carbon Steel Wire Rod from Brazil, Belgium, France and Venezuela* (1982),⁴¹ and most recently reaffirmed in *Fireplace Mesh Panels from Taiwan* (1982).⁴²

⁴⁰ *Certain Steel Wire Nails from the Republic of Korea*, Inv. No. 701-TA-145 (Prel.), USITC Pub. No. 1223 (March 1982). See "Additional Views of Commissioner Paula Stern" at 11-14.

Interestingly enough, initiating the controversy over margins analysis in *Certain Steel Wire Nails*, Commissioner Calhoun when faced with the situation of allegations of material injury from both dumping and subsidies on the same imports was forced to back away somewhat from his earlier arguments on causation. See "Additional Views of Commissioner Calhoun," *Fireplace Mesh Panels from Taiwan*, Inv. No. 701-TA-185 (Prel.) (1982). He stated:

"... if our finding here is to be by reason of the merchandise under investigation, to wit subsidized fireplace mesh panels from Taiwan, then it seems to me we must be able to identify how the subsidized character of the merchandise and not the LTFV character of the merchandise is causing material injury. To undertake this kind of analytical process given the fact situation here seems to me only to be logical. (at 24)

⁴¹ *Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela*, Inv. No. 701-TA-148, 149, 150 (Prel.), and Inv. No. 731-TA-88 (Prel.), USITC Pub. 1230 (March 1982). See "Additional Views of Commissioner Paula Stern" at pp. 21-32.

⁴² *Fireplace Mesh Panels from Taiwan*, Inv. No. 701-TA-185 (Prel.), USITC Pub. 1284, Sept. 1982. See "Additional Views of Commissioner Paula Stern" at pp. 11-18.

Most succinctly put, the general issue is whether the Commission's task is to determine if any material injury has been suffered or is threatened by reason of the subject imports or by reason of the subsidization of the imports. In *Certain Steel Wire Nails* (1982),⁴³ the issue first arose in preliminary countervailing duty cases. In *Carbon Steel Wire Rod*⁴⁴ that concern arose in a preliminary antidumping case as well. However, this is the first occasion in which the Commission as a whole has reached this issue in a final investigation under the Tariff Act of 1930 (the Act) since it was amended by the Trade Agreements Act of 1979.⁴⁵ It is also the first occasion on which a Commission majority apparently has rejected the position which I most strongly believe to be the correct one.

Discussion was focused on two interpretations of the phrase, "the effects of the subsidized imports"⁴⁶ and "by reason or imports":⁴⁷ (1) Judging the full impact of the subject imports, which happen to benefit from a subsidy or are being sold at less than fair value; or (2) judging the impact of the dumped or subsidized imports by performing "Margins analysis." I believe the language of the Act on this subject is not intuitively clear on its face and, therefore, merits careful examination.

The conceptual difference between these two approaches cannot be underestimated. The first alternative would attach no weight to whether, for instance, a subsidy was 0.000 percent, 0.5 percent, or 50 percent. Any imports benefitting from a subsidy—no matter how insignificant, even if *de minimis*—would be equally tainted for purposes of causality analysis under the first formulation. By contrast, the second formulation would require the causality analysis to trace, to whatever extent possible, the role of the subsidy in the imports' impact on the domestic industry.

A practical example at the outset of how margins analysis in countervailing duty (CVD) cases might be conducted may help further focus the subject. The Commerce Department, prior to the Commission completing a final CVD

case prepares a final estimate in the form of an *ad valorem* equivalent⁴⁸ of all bounties and grants the subject foreign producers receive from their governments. Let us assume that the subsidy provided by the Government of Oz to its widget producers is evaluated at 10 percent. Furthermore, in our hypothetical case let us assume that American widget makers are suffering enormous losses and have appealed to the Commission for relief from the injury caused by subsidized Ozien widgets, which are capturing 0.05 percent of U.S. consumption. Other factors aside, one might conclude that the subsidy, whatever its magnitude, is having a rather inconsequential impact. If an error were discovered, and the Ozien market share turned out to be 5 percent, the causality analysis would have to go further. If Ozien widgets were underselling the American product by only 2 percent and their presence was stable or growing, it might be fair to conclude, all other factors being the same, that the subsidy was responsible for giving Ozien widgets a competitive edge. In the absence of the subsidy, the hard pressed U.S. widget makers' fate would have been materially better. But if that margin of underselling were 30 percent, it might be difficult to see how eliminating with a countervailing duty only 10 percent of the large Ozien advantage would materially assist the U.S. industry. Notice all the conditionals: might, could, all other factors being equal, etc. Margins analysis is but one tool, albeit a potentially important one, in the analytical arsenal of the Commission. While the analysis makes use of certain quantitative data, it remains essentially qualitative in nature.

I would like to examine the statute, the legislative history, and Commission practice before responding to objections that have been raised to the wisdom of this kind of analysis. The statute in section 771(c)(ii) mandates that the Commission consider certain factors in "evaluating the effects of imports of such merchandise." But how these factors should be evaluated to determine causality is not explicit in this phrase. I believe that the statute, the legislative history, and the relevant international agreements taken together clearly demonstrate that the second alternative is the proper basis for assessing causality in the Commission's countervailing duty and antidumping investigations and is true to the intended meaning of the phrases "the

⁴³ *Certain Steel Wire Nails from the Republic of Korea*, Inv. No. 701-TA-145 (Prel.), USITC Pub. No. 1223 (March 1982).

⁴⁴ *Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela*, Inv. No. 701-TA-148, 149, 150 (Prel.), and Inv. No. 731-TA-88 (Prel.), USITC Pub. No. 1230 (March 1982).

⁴⁵ 19 U.S.C. 1671b.

⁴⁶ E.g., section 771(4)(D) uses this phrase.

⁴⁷ E.g., sections 701(a), 703(a) and 705(b)—which deal with the countervailing duty determinations of the Commission—employ such a phrase. The same phrase is found in sections 731(a), 733(a), and 735(b) which concern antidumping determinations.

⁴⁸ As a percentage of the customs valuation which is the foreign export value, F.O.B. foreign port.

effects of the subsidized imports" and "by reason of imports."

The Senate Finance Committee's "Report on the Trade Agreements Act" (Senate Report) directs the Commission to continue its practice of looking to the effects of the net subsidy in its countervailing duty determinations:

In determining whether injury is "by reason of" subsidized imports, the ITC now looks at the effects of such imports on the domestic industry. The ITC investigates the conditions of trade and competition and the general condition and structure of the relevant industry. It also considers, among other factors, the quantity, nature, and rate of importation of the imports subject to the investigation, and how the effects of the net bounty or grant relate to the injury, if any, to the domestic industry. Current ITC practice with respect to which imports will be considered in determining the impact on the U.S. industry is continued under the bill. (Emphasis added.)⁴⁹

With even greater significance and clarity, the Senate Report goes on to add:

While injury caused by unfair competition, such as subsidization, does not require as strong a causation link to imports as would be required in determining the existence of injury under fair trade import relief laws, the Commission must satisfy itself that, in [the] light of all the information presented, there is a sufficient causal link between the subsidization and the requisite injury. (Emphasis added.)^{50 51}

No more direct encouragement to use the subsidy margins provided by Commerce in the analysis of causality could possibly be given. The Senate Report employs the identical language in directing the Commission with regard to antidumping deliberations, replacing only the phrase "net bounty or grant" with "margin of dumping."⁵² The "by

reason of imports" language of the Trade Agreements Act tracks similar language in the Antidumping Act, 1921. The statutory repetition of this causality language in the absence of any criticism of the Commission's prior practice constitutes implicit approval by Congress of the Commission's causality methodology.

The Commission's longstanding practice under the 1921 Act was to link the dumping margin to the injury. As a matter of administrative practice under the Antidumping Act, 1921, the Commission sought to establish a "causal link" between the weighted average of the margins of less-than-fair-value sales determined by the Treasury Department in its dumping investigation and the average by which the dumped imports undersold competing articles produced by the U.S. industry. If the dumped merchandise undersold the merchandise produced in the United States by more than the weighted average of the less-than-fair-value sales, the Commission would conclude that the margin did not have a causal relationship to any injury resulting from the underselling. This reasoning was adopted by a Commission majority in the negative determination in Plastic Mattress Handles from Canada (1969).⁵³ The most recent investigation in which a unanimous Commission either expressed this reasoning or concurred in its result was *Welded Stainless Steel Pipe and Tube from Japan* (1978).⁵⁴ The time span alone between these cases is an indication of the consistent interpretation by the Commission.

This practice was carried over to the duty-free provisions of the countervailing duty statute enacted in the Trade Act of 1974 (section 303(b) of the Tariff Act). In the first Commission countervailing duty investigation, *Certain Zoris from the Republic of China* (1976), the Commission stated that

* * * the bounty or grant paid on the subject imports of zoris would amount to only about 1.3 cents per pair. Such a bounty or grant would account for only a fraction of the margin of underselling which the subject imports enjoy over casual footwear produced in the United States.⁵⁵

⁵³ Inv. NO. AA1921-57, T.C. Pub. 298, Oct. 1969, at 5. The analysis may have been used in earlier cases. This is the first instance of which I am aware in which the Commission states that it was employing the analysis.

⁵⁴ Inv. No. AA1921-180, USITC Pub. 889, July 1978 at 5, 11-12. This uniform and consistent interpretation by an agency in administering these provisions should be given considerable weight.

⁵⁵ *Certain Zoris from the Republic of China* (Taiwan), Inv. No. 303-TA-1, USITC Pub. No. 787, Sept. 1976, at 7.

In the later antidumping case, *Welded Stainless Steel Pipe and Tube from Japan* (1978), the Commission found in the negative also because the dumping margins accounted for only a small part of the amount by which the imports undersold the U.S. product.⁵⁶ In *Certain Fish from Canada* (1978), a unanimous Commission found in the negative. It concluded that there was no likelihood of injury due to the subject imports because those subsidies not scheduled for immediate elimination "are not likely to have any injurious impact on the U.S. industry."⁵⁷

In *Unlashed Leather Footwear Uppers from India* (1980)⁵⁸, the first countervailing duty case decided after the Trade Agreements Act of 1979 took effect, the Commission majority relied in large part on the "inconsequential" size of the subsidy in coming to a negative determination. In our "Statement of Reasons," Chairman Bedell and Commissioner Moore and I noted:

* * * the impact of a subsidy of 1.01 percent ad valorem on the price of finished nonrubber footwear is inconsequential * * * If the Indian subsidies had any effect on U.S. nonrubber footwear prices, it was to make them more competitive with prices of imported footwear, since it is U.S. nonrubber footwear producers which purchase the Indian shoe uppers.⁵⁹

In their concurring views, Vice Chairman Alberger and Commissioner Calhoun also relied on an analysis of

⁵⁶ *Welded Stainless Steel Pipe and Tube from Japan*, Inv. No. AA1921-180, USITC Pub. 899, July 1978. In the majority opinion, Chairman Joseph O. Parker, and Commissioners George M. Moore and Catherine Bedell concluded: " * * * the dumping margin accounted for only a small part of the amount by which the Japanese pipe and tubing undersold the domestic product. Even without the LTFV margins, the Japanese pipe and tubing would have been priced substantially below domestically produced pipe and tubing and at a price differential to attract sales from domestic producers. Under these circumstances, any sales that U.S. producers might have lost to Japanese imports or any price suppression that might have been experienced by U.S. producers cannot be attributed to the LTFV margins applicable to imports from Japan." ("Views" at 5-7.) In the concurring "Reasons for Negative Determination," Commissioners Bill Alberger and Daniel Minchew adopted similar reasoning and came to an identical conclusion. ("Reasons" at 11-12.)

⁵⁷ *Certain Fish from Canada*, Inv. No. 303-TA-3, USITC Pub. No. 919 (September 1978). "Statement of Reasons of Chairman Joseph O. Parker, Vice Chairman Bill Alberger and Commissioners George M. Moore, Catherine Bedell, and Italo H. Ablondi," at 8.

⁵⁸ *Unlashed Leather Footwear Uppers from India*, Inv. No. 701-TA-1 (Final), USITC Pub. No. 1045, March 1980. See also *Anhydrous Sodium Metasilicate from France*, Inv. No. 731-TA-25 (Prel. and Final), USITC Pub. Nos. 1080 and 1118, June and December 1980.

⁵⁹ *Ibid.*, "Statement of Reasons of Catherine Bedell, Commissioners George Moore and Paula Stern" at 6.

⁴⁹ Senate Comm. of Finance, Trade Agreements Act of 1979, S. Rept. No. 96-249, 96th Cong., 1st Sess. (1979) at 57.

⁵⁰ *Ibid.*, at 58.

⁵¹ A review of the drafting of the Subsidies and Antidumping Codes contains background on what should be used to determine causation of material injury—[the language finally agreed upon provided that: "[i]t must be demonstrated that subsidized imports are, through the effects of the subsidy, causing injury within the meaning of this Agreement." Richard Rivers and John Greenwald: The Negotiation of a Code on Subsidies and Countervailing Measures: Bridging Fundamental Policy Differences, 11 L. & Pol'y Int'l Bus. 1447, 1457 (1979).

The Director-General of GATT in April of 1979 described the negotiations at the Tokyo Round on this same issue:

Many participants took the firm position that . . . [t]he existence of a significant material injury must be proven and the causal link between injury and the particular subsidy established. Director-General of GATT, the Tokyo Round of Multilateral Trade Negotiations, 59.)

See also U.S. Office of Special Trade Representative, Background Papers on MTN, Subsidies and Countervailing Duties (May 2, 1979).

⁵² S. Rept. No. 96-249, at 74.

the subsidy in making the Commission's determination unanimous. They observed:

* * * the impact of the 1.01 percent ad valorem Indian subsidy on production costs of nonrubber footwear is also small * * *. In view of these low level of market penetration and the low level of the subsidy, the fact of material injury by reason of these subsidized imports cannot be established.⁶⁰

In *Certain Iron-Metal Castings from India* (1980)⁶¹, the Commission again returned to the issue of the impact of a subsidy on the domestic industry. I noted in my views, "My analysis shows that subject imports caused price suppression as a result of the subsidies despite the fact that margins of underselling were larger than the levels of subsidy."⁶² Chairman Alberger also observed: "The margin of underselling by the importers' product was more than twice the amount of the subsidy * * *."⁶³ Though we reached different conclusions, both Chairman Alberger and I recognized the importance of analyzing the effect of the subsidy.

In a subsequent preliminary antidumping case, *Certain Iron-Metal Castings from India* (1981), Vice Chairman Calhoun and Commissioners Moore and Bedell spoke of a reasonable indication of material injury "beyond, and entirely separate from, any injury caused by the export subsidies already found to exist on Indian castings."⁶⁴ In my concurring opinion and in Chairman Alberger's dissenting opinion, we both referred to the LTFV margins and the subsidies in examining causation.⁶⁵

Thus, it has been a long and continuous Commission practice in both antidumping and countervailing duty cases to base its analysis of causality part⁶⁶ on the links between the offending act and any impact of the imports on the domestic industry. Obviously, the offending act is injurious subsidization, not importation. When the net subsidy or margin of dumping

has accounted for only a small portion of the margin of underselling, the Commission has reasoned in general that the injury could not be remedied by a countervailing or antidumping duty and found in the negative.

The recent discussion of the problems of causality analysis suffered from a mistaken belief that the "plain language" of the statute is "unambiguous" and that, therefore, reference to the legislative history and the GATT code is "irrelevant."⁶⁷ However, the Senate Report devotes much space to a discussion of this "unambiguous" subject. The Act itself is necessarily streamlined and the entire discussion of the issue by all parties in the present cases and two of the Commissioners in *Certain Steel Wire Nails* (1982), *Carbon Steel Wire Rod* (1982) and *Fireplace Mesh Panels* (1982) testifies to the need for further explication of the statutory language. Of course, the legislative history and the GATT discussion are only of assistance to the extent they explain, rather than contradict, the statute.

Furthermore, it should first be noted that the so-called "plain meaning" rule is the result of an analysis, not its beginning.⁶⁸ A "plain meaning" pronouncement is a statement to the effect that there is no reason to conclude that the language in question should be expanded or restricted in light of another section of the statute, or that plain meaning of the language in question is repugnant to the overall statute, or that the legislative history of the Act shows that the Congress intended the language to be used in a sense other than its common meaning. I am willing to grant the literal language in both the Act and the MTN codes which they implemented does not require that the Commission *must* trace injury from subsidized imports to the subsidy or from dumped goods to the margin of dumping. Nor does the language of the Act forbid such an exercise. The analysis offered above surely establishes that the meaning of the phrase "effect of subsidized imports" is not intuitively obvious to the most casual observer. Examined in its appropriate context, as I have attempted to do here, the meaning which I have suggested for the statutory language has a greater claim to the "plain" meaning than that offered by the majority. And the interpretation I have championed has the added advantage of making

economic sense of the material injury test which the Act embodies, because causality depends on the magnitude of injurious impact in the same manner that the remedy, a special duty, reflects only the magnitude of the unfair practice.

Failing to demonstrate that subsidy analysis contradicts the plain meaning or legislative intent of the statute, the proponents of conducting an analysis of the impact of imports, blind to the subsidy involved here, have underlined the weakness of their theoretical position by resorting to a seemingly endless series of "practical" arguments. Detailed tracing of margins has alternately been characterized as an impossible burden, an exercise lacking economic relevance, an encroachment on the statutory bifurcation of authority between the Commission and Commerce, or an administrative nightmare. I will deal with each of these in turn.

Impossible burden.—It has been suggested that the purpose of the Act would be defeated if it made a remedy "contingent upon a detailed tracking" of the impact of such practices on the domestic industry. This argument apparently applies only to subsidies since dumping by definition is the relatively direct activity of selling at below home-market fair value (however difficult it may be to determine properly fair value). Moreover, if it were an impossible burden to make such a detailed tracing, the Act is surely self-defeating because a rather detailed tracing—on occasion more complex than that suggested here for the Commission—is required of Commerce by the Act when it prepares its final margins. All information on subsidies and/or dumping is distilled—quantified—into simple margins based on prices. Application of the remedy is absolutely dependent on this "detailed tracing," and the Commission—at least in final investigations—benefits from the knowledge Commerce has acquired.

There are two indications in the statute that Congress envisioned the Commission as having the wherewithall to complete the tracing which Commerce begins by constructing the margins. Section 771(7)(E)(i) provides:

Nature of Subsidy—In determining whether there is threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign

⁶⁰ *Ibid.*, "Views of Commissioners Alberger and Calhoun" at 14.

⁶¹ *Certain Iron-Metal Castings from India*, Inv. No. 303-TA-13 (Final), USITC Pub. No. 1098, September 1980.

⁶² *Ibid.*, "Statement of Reasons of Commissioner Paula Stern" at 24.

⁶³ *Ibid.*, "Views of Chairman Bill Alberger" at 34.

⁶⁴ *Certain Iron-Metal Castings from India*, Inv. No. 731-TA-37 (Preliminary), USITC No. 1122, January 1981, "Statement of Reasons for the Affirmative Determination of Vice Chairman Michael J. Calhoun and Commissioners George M. Moore and Catherine Bedell" at 5.

⁶⁵ *Ibid.*, "Views of Commissioner Paula Stern" at 9 and "Views of Chairman Bill Alberger" at 10.

⁶⁶ Analysis of subsidies or margins of dumping has formed only *one part* of the Commission's considerations of causality. This has always been my position.

⁶⁷ *E.g.*: see "Additional Views of Vice Chairman Michael J. Calhoun" in *Certain Steel Wire Nails from the Republic of Korea* (1982) at 15-22.

⁶⁸ Sutherland on Statutory Interpretation, Vol. 24 (4th Ed., 1973) at 48-49.

country and the effects likely to be caused by the subsidy.⁶⁹

This section of statute applies only to threat cases. But it does demonstrate Congressional faith in the *ability* of the Commission to perform subsidy analysis. Surely, if the burden were "impossible," Congress would not have directed the Commission to assume it under any conditions. Congressional confidence in the Commission's ability to perform this kind of task is further exhibited in the construction of section 104(b) of the Trade Agreements Act, which provides for review investigations of outstanding countervailing duty orders. The Commission must assess what effect an outstanding order has had on the pricing and other marketing strategies of the importers and exporters subject to it. This kind of retrospective analysis or projection is surely as difficult as any I, or the full Commission, in the cases earlier cited, believe should be conducted in ordinary non-review cases.

An Exercise Without Economic Relevance.—The next practical argument concerns the economic relevance of the margins found by Commerce. Harald Malmgren is cited:

The charging of different prices for the same product in different markets can result from the fact that there are always some impediments to arbitrage and from the fact that elasticities of demand vary from market * * *. This has nothing to do with the question of subsidies.⁷⁰

Nor may I add would *such* international price differences have anything to do with predatory dumping. The point here is that pricing below home market in a foreign market can be a perfectly rational reflection of different supply and demand situations and not reflect any inately unfair activity. This is a potential problem with the statutes themselves, and has nothing whatever to do with the most rational way of applying them. The argument continues by noting that Commerce's calculations are based on foreign accounting principles and the principles may vary by company as well. In general, accounting principles for the purposes of valuation in a taxation proceeding do not measure economic phenomena outside the accounting system and the taxation regulations.

⁶⁹ To date the Commission has relied on section 771(7)(E)(i) in *Leather Wearing Apparel from Uruguay*, Inv. No. 701-TA-68 (Final), USITC Pub. 1144, May 1981; *Hot-Rolled Carbon Steel Plate from Brazil*, Inv. No. 701-TA-84 (Prel.), USITC Pub. No. 1207, January 1982; and *Hot-Rolled Carbon Steel Plate from Brazil*, Inv. No. 701-TA-87 (Prel.), USITC Pub. 1221, Feb. 1982.

⁷⁰ Harald B. Malmgren, *International Order for Public Subsidies* (London, 1977) at 40-41.

There is nothing surprising in any of this. Commerce has an admittedly difficult task in wading through indirect subsidy programs and foreign firms' books to arrive at the *ad valorem* values of a foreign subsidy for the purpose of assessing an offsetting tax.

Two further comments are prompted. First, the conversion of indirect subsidies into an *ad valorem* equivalent (carried to the third decimal point) is Commerce's duty and one which I trust it approaches with the greatest care. I must rely on this information because it is the best available, and in the bifurcated scheme of responsibilities, it is Commerce's undisputed bailiwick. Second, the problems encountered by Commerce in dealing with accounting quantities which may not conform directly to economic reality are those encountered by the Commission itself in compiling aggregate data on the economic performance of the domestic industry. In case after case, financial performance data of individual firms reflect incompatible accounting years, various methods for treating inventories, different depreciation practices, and highly individual methods of allocating expenses to the product lines under consideration. The complexity of this problem does not afford the Commission the idle luxury of ignoring the results unless the data is utterly worthless. Our practice is to use the best available information and do our best to adjust our analysis for any shortcomings in the data.

Bifurcation of Responsibilities.—Margin analysis preserves the statutory bifurcation of responsibilities between Commerce and the Commission. The purpose of Commerce's calculations are to develop an offsetting tax. The purpose of the Commission's work is to determine the impact on the market place of the original subsidy. To simplify the analysis to the level of freshman economics, the subsidy is presumed to shift the supply curve of the foreign producers to the right so that at any given market price a greater quantity is supplied. Commerce estimates the amount of the shifting. The Commission then determines whether material injury to the U.S. industry results from the shifting, not from the simple presence of imports. If the Commission finds in the affirmative, the countervailing duty is applied to shift the foreign supply curve back to where it presumably would have been without the subsidy. The statutory scheme allows a similar result to be achieved by a settlement in which the foreign government, for instance, places an equivalent export tax on the product.

An Administrative Nightmare.—A further "practical" concern is that making affirmative determinations dependent on subsidy analysis would destroy their stability by opening them up to remands by the reviewing court if it found the net subsidy to be significantly smaller than that found by Commerce. Such analysis would destroy the "stability" of ill-founded affirmative decisions. But in general, effective administration of a statute should never be divorced from the specific acts the statute is intended by all accounts to remedy. If, as I have maintained, margin analysis should continue as an element of the Commission's deliberations, then any significant correction to the margins may be proper cause for reconsideration.⁷¹ One might argue by analogy that the "stability" of Commission affirmatives could be increased by making them independent of profit data which may be incorrectly calculated.⁷² But such independence would eliminate the material injury standard of the statute in the same manner as blindness to margins cripples the causality standard.

To conclude, I do not believe that an affirmative determination critically depends on the most intricate tracing of the incidence of the subsidies and dumping margins on the domestic market. But the information is a consideration of the first order, and we are required to base our determinations on the best available information. The process is not unnecessarily burdensome to the Commission. Indeed, with the bifurcation of responsibilities between Commerce and the Commission, Commerce lightens our task considerably by conducting the examination and determination of the margins. Rather than ignoring the information provided on this subject, the Commission should continue to incorporate it into its causality considerations. The Commission comes to this task well prepared as it is accustomed to the "intricate tracing" of many other market phenomena.

From the above, it is clear that I have concluded that causality is what common sense tells us it ought to be—connecting unfair practices, LTFV and/

⁷¹ Of course the statute provides that changes in subsidy margins subsequent to a Commission determination can be accommodated by an annual Commerce review mechanism without further reference to the Commission. See 19 U.S.C. 1675a.

⁷² *Atlantic Sugar, Ltd., et al. v. United States*, USCIT No. 80-5-00754, Slip Opinion 81-62 (July 8, 1981). The Court remanded the case to the Commission in part because of errors in the calculation of certain data. The solution is to do the calculations correctly, not throw out the indicator involved.

or subsidized sales of imports to the material injury they cause. Refusing to do so violates the logical scheme of the statute and would fundamentally undermine the standard for causation, particularly in final investigations such as those before the Commission here.⁷³

B. De Minimis Subsidies

In analyzing causality in the present cases, the Commission was confronted with the three affirmative final subsidy determinations by Commerce in which Commerce itself terms them subsidies and evaluates them as 0.000 percent. A "de minimis" subsidy is one which is trifling, *i.e.*, not legally cognizable. Inasmuch as the subsidies themselves are trifles, their effects, too, cannot be measurable. Accordingly, I have no difficulty with finding that a "de minimis" subsidy cannot be the cause of present material injury.

For such subsidized imports to cause future material injury, two conditions would have to be met. First, the level of subsidization would have to increase at some point in the future from the present "de minimis" amount. Second, the future non-"de minimis" subsidies would have to be shown to enable the subsidized imports to threaten material injury. There is nothing on the record, however, indicating that these subsidies will increase. To assume that the subsidies will increase merely because there are on-going programs would be mere conjecture. The Congressional standard for a finding of a threat of material injury is that the Commission's record contain "information showing that the threat is real and injury is imminent, not a mere supposition of conjecture."⁷⁴ The mere possibility that a significant subsidy might be funded at some time in the future does not meet this standard.⁷⁵

Therefore, to connect imports benefitting from such subsidies to hypothetical future material injury would be to engage in two levels of supposition—in the first instance about the future of the subsidy and in the second instance about the subsequent impact on the domestic industry.

C. Circumstances for Cumulation

The Commission long ago adopted the practice of using its discretion in cumulating the impact of competitive imports from more than one country in reaching its determinations regarding material injury.⁷⁶ The circumstances which indicate whether cumulation is appropriate concern the competitiveness of the imported products with the domestically-produced products and with each other. It is standing Commission practice that it must be demonstrated that "the factors and conditions of trade in the particular case show its relevance to the determination of injury."⁷⁷ Factors and conditions which could combine to create a collective "hammering effect on the domestic industry" would be of most concern. These might include:

- Volume of subject imports
- Fungibility of imports
- Competition in markets for the same end-users
- Common channels of distribution
- Simultaneous impact
- Trend of import volume
- Pricing similarity
- Any coordinated action by importers

The record contains ample information to demonstrate that virtually all these factors and conditions argue for cumulation. There is no evidence of coordinated actions by importers and in individual cases, import volume trends and pricing behavior show some differences.

The product lines subject to these steel investigations contain competitive, often totally fungible, products. The record of these investigations indicates that brokers buy on the open market and may not even know the identity of the producer of the materials purchased. Where these factors are present, it would be unrealistic to attempt to differentiate the effects of imports from individual countries. In these

circumstances, the cumulative effect of all of the imports subject to these particular investigations contribute to the prevailing market conditions.⁷⁸

Cumulation is obviously unnecessary in cases where affirmative determinations are possible on an individual basis. Furthermore, in those cases on which I have voted negatively, the imports in question could not possibly have contributed to material injury. The standard of "contributing to material injury" is obviously a lower one than that of individually causing material injury. But the logic of cumulation, if it is to remain in accord with the carefully constructed causation standards of the Act, requires that the imports of any country being cumulatively assessed must, at the very least, contribute to the overall material injury to be remedied. This standard has been enunciated by former Chairman Alberger, Commissioner Eckes, and myself in the preliminary cases.⁷⁹ In the explanation of my determinations for each product line I distinguish those situations in which cumulation was deemed appropriate.

D. The Meaning of Lost Sales

As the language of the determination plainly notes, the Commission must examine injury to an entire *industry* in the United States, not merely to individual producers. Clearly this requires a judgment about the aggregate effect of the subsidized imports on the aggregate condition of the domestic industry. The Commission's record contains information ranging in generality from individual transactions to the performance of the entire economy. All this data can be useful. However, a great care must be employed in the use of micro data to form conclusions about aggregate phenomena. Lost sales data in particular offer both unique advantages and disadvantages in forming judgments on the causality of injury. I believe that my

⁷³ In some preliminary investigations, an argument was made that the very attempt to tie the proscribed practices to the imports creates a *de facto* double standard for material injury in preliminary and final cases. I believe that this conclusion is unwarranted. I have always been of the view that the concepts of the Act (*e.g.*, material injury, by reason of, industry), have a single meaning common to both preliminary and final cases. Indeed, the definitions of such terms are found in section 771 which applies to *preliminary* and final antidumping and countervailing duty cases alike. But there is a fundamental, inescapable difference between preliminary and final cases—the evidentiary standards. In preliminary cases, a *reasonable indication* must be shown; in final cases, material injury due to subsidized or LTFV imports must be proven. Using information on subsidies or dumping margins in final cases imposes no double standard other than the different evidentiary requirements already stated.

⁷⁴ Senate Report No. 249, 96th Cong., 1st Sess., 88, 89 (1979), House Report No. 317, 96th Cong., 1st Sess., 47 (1979), cited in *Alberta Gas Chemicals, Inc. v. United States*, 515 F. Supp. 780, 790 (1981).

⁷⁵ Cf., *Alberta Gas Chemicals, Inc. v. United States*, 515 F. Supp. 780, 791 (1981).

⁷⁶ Pig Iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R., Inv. Nos. AA1921-52 to 55, TC Pub. 265 (1968), at 17 (Views of Commissioner Clubb); Potassium Chloride from Canada, France, and West Germany, Inv. Nos. AA1921-58 to 60, TC Pub. 303 (1969). See S. Rept. No. 93-1298, 93rd Cong., 2d Sess., 180 (1974).

⁷⁷ S. Rept. No. 93-1298, 93rd Cong., 2d Sess. (1974), at 180. There are no criticisms in the legislative history accompanying the Trade Agreements Act of 1979 of this long-standing, uniform and consistent practice of the Commission.

⁷⁸ I have not cumulated the impact of subsidized imports with that of imports sold at less than fair value, nor with that of imports for which the Department of Commerce has not made final determinations as to the net subsidy. With regard to imports from South Africa, a country which has not signed the international subsidies agreement, I have taken their presence into account but found that it is not necessary to cumulate them as their inclusion or exclusion would not result in a change in any of my determinations.

⁷⁹ Certain Steel Products * * *, Inv. Nos. 701-TA-86 through 144, 701-TA-146 and 701-TA-147 (Preliminary) and Inv. Nos. 731-TA-53 through 86 (Preliminary), USITC Pub. 1221 (Feb 1982). See "Views of Chairman Alberger, Vice Chairman Calhoun, and Commissioners Stern and Eckes" at 16. Footnote 36 makes clear that this approach was also adopted by Chairman Alberger and myself in the May 1980 preliminary steel cases.

colleagues, in their efforts to avoid looking at the aggregate impact of subsidies, may be placing an unjustified emphasis on lost sales representing a biased selection never covering more than 5.7 percent of foreign sales in any of these final cases.

The reasons for such a temptation are clear enough. Confirmed lost sales by domestic producers to the imports in question are a tangible link between the two. Aggregate pricing comparisons are extremely difficult to calculate on a comparable basis for the domestic product and the imports; lost sales data on the other hand, give a head on comparison of domestic and foreign prices at the same time, in the same location, and often on the identical grade of product. The multitude of differences in characteristics within each steel product line makes loss sales information a particularly seductive alternative to the complex pricing analysis performed by the staff and reported in great detail with many qualifiers. But lost sales except in the most unusual of circumstances remain but an *indication* of the possible diversion of business from the domestic producers to persons selling the subsidized imports. To establish that such diversion actually occurred and the reasons for it, the Commission does not rely on information merely indicating reduced sales of domestic producers or increased sales of the imported merchandise. Rather, the Commission attempts to find customers of the domestic producers who have shifted appreciable amounts of their requirements from the domestic producers to the imports. Moreover, the Commission attempts to discern the reason for the shift. In those cases where price is the principal reason for the switch and aggressive pricing is characteristic of the market, lost sales could be a confirmation of the loss of market share from aggressive marketing. On the other hand, this would not be the case if customers sought out alternative sources of supply in response to quality or delivery problems with domestic producers.

In cases where the Commission staff verifies that a domestic producer lost sales to subsidized imports, the lost sale is not necessarily representative of a general business diversion in the market place. It is not common for the customers of a domestic customer to disclose to the producer their reasons for reducing orders. Many claims of lost sales made by domestic producers, when investigated, turn out to involve business won by other domestic companies or by non-subject imports not

cited in the complaints. Confirmed lost sales information comes from a sample selected by the petitioners. They do not in general tell the Commission of sales won from foreign competitors. The reasons for a lost sale furnished by the customer may be self-serving as well.

In addition to not being representative of overall business diversion in the market place, confirmed lost sales represent transactions which may not, in turn, represent trends in market share. Indeed, any truly competitive market should be characterized by all producers—domestic and foreign—experiencing lost—and gained—sales. Such behavior could be perfectly compatible with constant market shares for all participants, growing overall demand, and a healthy industry with no party inflicting injury. A domestic consumer may switch suppliers and purchase subsidized merchandise in a market in which overall subsidized imports declining. In such cases, lost sales would in no way represent the aggregate impact of subsidized imports on the domestic producers of the merchandise under investigation.

Nevertheless, lost sales information is useful. The *absence* of any confirmed lost sales could be a strong indicator of the lack of a causal link. The *presence* of lost sales invites further investigation of aggregate pricing trends to find whether imports are underpricing or otherwise unfairly aided in their competition with the domestic product by the subsidies in question. Such aggregate pricing information is collected by random sampling, rather than through self-selected lost sales. In a statistical sense, there should be a stochastic element to prices in all competitive markets. Lost sales are a biased selection of those sales on which the successful bidder is most likely to have offered a lower price. They demonstrate very little about aggregate pricing behavior unless they cover a significant percentage of foreign sales in the U.S. market. In a preliminary investigation, where comparable pricing data may often be totally lacking, lost sales may provide the required *indication* of causality needed for an affirmative. The investigations before us today are *final* ones and require *proof* of causal link, not merely a *reasonable indication*. In the absence of comparable aggregate pricing information, lost sales that were truly *representative* could theoretically provide such proof. But the coverage of the lost sales information is a paltry 0.0 to 6 percent of the subject imports. There are absolutely *no* indications that the data are representative.

Furthermore, there is comparable pricing data which the staff has compiled on a random, unbiased basis. Undue reliance on the lost sales information in this situation would be myopic and misleading.

Having discussed the principles underpinning my case-by-case analysis, I will now focus on the sixteen individual cases taken product line by product line.

III. Hot-rolled Carbon Steel Plate

A. Belgium⁸⁰

1. *Imports.* Imports from Belgium fell from 386,000 short tons in 1978 to 214,000 tons in 1979, but then increased to 286,000 tons in 1980 and 287,000 tons in 1981. Imports in January-June 1982 amounted to 116,000 tons, 11 percent below the level for the same period of 1981.⁸¹ The ratio of these imports to apparent U.S. consumption fell irregularly from 4.6 percent to 3.9 percent in 1981. In the first half of 1982 the market share rose to 4.7 percent compared to 3.2 percent for the like period of 1981.⁸²

2. *Prices and Lost Sales.* Data adequate for analysis indicate underselling in 42 of 54 observations with margins of underselling generally ranging from 5 to 15 percent.⁸³

Of 26 lost sales allegations checked, 18 were confirmed, all because of price.⁸⁴ Confirmed lost sales covered 0.9 percent subject Belgian sales.⁸⁵

3. *Subsidy.* The size of subsidies found out on subject Belgian steel ranged from 0 to 13.4 percent. The most substantial Belgian producer, Clabecq, was continued by Commerce with a *de minimis* margin. Because it is inappropriate for the Commission to exclude firms that Commerce has included in its affirmative determinations, a weighted average subsidy margin was constructed.⁸⁶ The result was a margin well under two percent because Clabecq accounts for the lion's share of Belgian exports. Even assuming a full pass through of these

⁸⁰ Official import statistics do not separate Luxembourg from Belgium and therefore the numbers are given for the two combined. However, virtually all imports of this product originate in Belgium. See Report at II-29.

⁸¹⁻⁸⁴ Report at II-29, II-32; II-35; II-52; and II-57, respectively.

⁸⁵ Unless otherwise noted lost sales coverage figures show the total volume of confirmed allegations of lost sales verified in the final investigation as a percentage of total U.S. imports for consumption between January 1980 and June 1982. The source is calculations performed for my office by the Office of Economics.

⁸⁶ Source of weighted average calculations: Memorandum to Commissioner Stern from Director, Office of Investigations, September 30, 1982, submitted in confidence.

subsidies to the market place, a highly unlikely event, there would not be a material impact on the U.S. industry.

B. The United Kingdom

1. *Imports.* Imports from the United Kingdom fell from 34,000 tons in 1978 to 6,000 tons in 1980 before returning to 35,000 tons in 1981. In January-June 1982, 9,000 tons were imported, or 50 percent more than during the like period of 1981.⁸⁷

The ratio of imports to U.S. consumptions was 0.4 percent in 1978 and 0.5 percent in 1981. In the first half of 1982 the level was 0.4 percent compared to 0.1 percent for the like period of 1981.⁸⁸

2. *Pricing and Lost Sales.* The only pricing comparison showed a margin of underselling of 1 percent.⁸⁹ Of five lost sales investigated, 4 were confirmed all on the basis of price.⁹⁰ Confirmed lost sales covered 0.1 percent of subject U.K. sales.

C. Federal Republic of Germany

1. *Imports.* Imports from Germany fell irregularly from 183,000 tons in 1978 to 96,000 tons in 1981. In January-June 1982 there were 28,000 tons or 22 percent below the level for the like period of 1981.⁹¹

The ratio of imports to U.S. consumption fell from 2.2 percent in 1978 to 1.3 percent in 1981. In January-June 1982 they were 1.2 percent compared with 0.9 percent for the first half of 1981.⁹²

2. *Prices and Lost Sales.* Margins of underselling by the imports generally ranged from 10 to 15 percent and were calculated on a small base.⁹³

Of 9 lost sales checked, only 3 were confirmed, all on the basis of price.⁹⁴ The data covered 2.2 percent of German sales.

3. *Subsidy.* Commerce found *de minimis* level of subsidy on German imports and evaluated it at zero.

D. Determinations

I have made negative determinations in all three of the hot-rolled carbon steel plate cases. The significant underselling despite the *de minimis* level of the German subsidies and the declining penetration of imports rule out any possibility that German imports have contributed to any injury the U.S. industry is experiencing. Similarly, the extremely low level of subsidy on Belgian imports (evaluated at zero for most of the imports considered) coupled with significant margins of underselling

demonstrate that Belgian imports would be a strong factor in this market without the benefit of the subsidies noted by Commerce. Belgian imports are not causing or contributing to material injury. The tiny presence of imports from the United Kingdom is simply not significant enough to cause material injury.

Furthermore, nothing on the record demonstrates that these subsidized imports taken separately or cumulated with each other threaten to cause material injury in a real and imminent manner. Imports from Belgium have declined from their high point in 1978, with the decline especially noticeable in the most recent period, Jan.-June 1982. Imports from the U.K. have been at a very low level and stable, over the entire 4½ year period January 1978-June 1982.

In terms of import penetration, Belgium's share of the U.S. market has also declined. But more importantly, the Belgium producer Clabecq, which accounted for the vast bulk of Belgium plate exports to the United States throughout the entire period, was found to have been granted *de minimis* subsidies by Commerce.⁹⁵ Without Clabecq, import penetration by Belgium plate was less than 1 percent in all periods, January 1978-June 1982. (The import penetration ratios without Clabecq's figures are confidential.) U.K. import penetration for plate only reached 0.5 percent in calendar year 1981, and has receded since then.

Pricing information on Belgian plate supply indicates no evidence of price cutting to gain market share. Price data for the U.K. were not available, probably due to the country's small presence in the market.

The EC has a voluntary quota system for steel plate. Belgium and U.K. producers have had to cut production on these products during the period of investigation, and the amount of the cutback has increased.⁹⁶ This system restricts total production, including exports to the U.S. market. Belgium and U.K. producers are pledged under the Davignon Plan of the European Communities to end state subsidies, and rationalize production and capacity by 1985. Such rationalizations if undertaken will result in capacity cutbacks for most steel products, including hot-rolled plate.⁹⁷

IV. Hot-rolled carbon steel sheet and strip

A. Belgium

1. *Imports.*⁹⁸ Imports from Belgium grew irregularly from 77,000 tons in 1978 to 108,000 tons in 1981.⁹⁹ Imports in January-June 1982 were 54,000 tons compared to 13,000 during the first half of 1981.¹⁰⁰

As a share of apparent U.S. consumption they grew from 0.4 percent in 1978 to 0.7 percent in 1981. In January-June 1982, they had risen to 0.9 percent compared to 0.2 percent for January-June 1981.¹⁰¹

2. *Pricing and Lost Sales.* On a small base, margins of underselling by Belgian hot-rolled sheet ranged from 1 to 8 percent. In other instances the domestic product undersold comparable Belgian products.¹⁰²

Of lost sales allegations checked, three were confirmed, all due to price. They covered 0.5 percent of Belgian sales.^{103 104}

3. *Subsidies.* The subsidies reported on subject Belgian steel ranged from 0 to 13.4 percent. A weighted average margin was calculated which was very close to the top range of this margin, a reflection of the small role played by Clabecq, with its zero subsidy.

B. France

1. *Imports.* Imports from France fell irregularly from 694,000 tons in 1978 to 461,000 tons in 1981. In January-June 1982 they were 125,000 tons, 28 percent below levels for the comparable period of 1981.¹⁰⁵

The U.S. market share of such imports fell irregularly from 3.8 percent in 1978 to 3.1 percent in 1981. In January-June 1982 this ratio was 2.2 percent, about the same level as that recorded for the first half of 1981.¹⁰⁶

2. *Pricing and Lost Sales.* The pattern of pricing is not particularly clear. In about half of the observations, French imports undersold the domestic product by margin ranging from 1 to 10 percent. In the other half, the French prices were equal to or greater than domestic prices.¹⁰⁷

Of 27 lost sales allegations checked, 19 were confirmed, 16 due to price. The

⁹⁸ Data for Belgium and Luxembourg are not separately reported. However, the overwhelming bulk of the combined imports are from Belgium. See Report at II-24.

⁹⁹⁻¹⁰³ Report at III-24; III-27; III-30; III-43; III-48, respectively.

¹⁰⁴ The period of coverage is January 1980 through December 1981 because the Belgium/Luxembourg data cannot be disaggregated for January-June 1982.

¹⁰⁵⁻¹¹⁰ Report at III-32; III-30; III-43; III-47 and 48; III-21; and III-27, respectively.

⁸⁷⁻⁸⁸ Report at II-38 and II-35, respectively.

⁸⁹⁻⁹⁴ Report at II-52; II-58; II-38; II-35; II-52; II-58, respectively.

⁹⁵ See Report at II-32.

⁹⁶ See Report at E-5.

⁹⁷ See Report at E-8.

confirmed lost sales represented 0.4 percent of French sales.¹⁰⁸

3. *Subsidies.* French subsidies ranged from 4.0 to 21.4 percent. The weighted average margin was close to twenty percent and thus at the high end of the range.¹⁰⁹

C. Italy¹

1. *Imports.* The volume of imports from Italy fell from 250,000 tons in 1978 to 70,000 tons in 1981. For January-June 1982, they were 62,000 up dramatically from the one year earlier level of 5,000 tons.¹¹⁰

As a ratio of apparent U.S. consumption, they fell from 1.4 percent in 1978 to 0.5 percent in 1981. In January-June 1982, the share was 1.1 percent, up from the 0.1 percent level of the like period of 1981.¹¹¹

2. *Prices and Lost Sales.* Little comparative pricing information is available indicates that Italian steel is not underselling U.S. steel by large margins.

Of 3 lost sales allegations checked, two small ones were confirmed, both on the basis of price.¹¹² They represent 0.2 percent of Italian sales.

3. *Subsidies.* The size of subsidies reported on Italian steel ranged between 6.3 and 14.6 percent. No weighted average could be calculated.

D. Federal Republic of Germany

1. *Imports.* Imports from Germany fell from 677,000 tons in 1978 to 329,000 tons in 1981. In January-June 1982, they were 179,000 tons, up 66 percent from the level for the first half of 1981.¹¹³

Their share of U.S. consumption fell from 3.7 percent in 1978 to 2.2 percent in 1981, before rebounding to 3.2 percent in the first half of 1982. However, these figures are significantly overstated because approximately two-thirds of the volume comes from firms excluded from Commerce's final subsidy determinations.

2. *Pricing and Lost Sales.* Price comparisons with just the steel imported from the German mills included in Commerce's final subsidy determination were not possible. The overall data, including steel from all German sources, indicate a pattern of overselling by the German imports.

Of 18 lost sales allegations checked, only 6 were confirmed, 5 of them due to price.¹¹⁴ The confirmed lost sales represent 0.4 percent of all sales of subject German imports during the period.

3. *Subsidies.* The only German producer not excluded from Commerce's

final subsidy determination, Stahlwerke Peine-Salzgitter AG, received a *de minimis* subsidy which would be assessed at zero.

E. Determinations

Because of the *de minimis* subsidies involved, subsidized hot-rolled carbon steel sheet and strip from the Federal Republic of Germany cannot be contributing to material injury to the U.S. industry in this product line. Norris it threatening to do so within the meaning of the Act. I have found it appropriate to cumulate the impact of subject imports from Belgium, France, and Italy, all of which are receiving significant subsidies. I find in the affirmative on these three cases because taken together, the subsidization of this subject steel has been shown to be having a material impact on the worsening situation of the domestic industry.

V. Cold-rolled Carbon Steel Sheet and Strip

A. France

1. *Imports.* The volume of French imports declined irregularly from 260,000 short tons in 1978 to 154,000 tons in 1981. In January-June 1982, imports of 94,000 short tons were recorded compared to 67,000 tons during the same period of 1981.¹¹⁵

As a share of apparent U.S. consumption, French imports declined slightly from 1.2 percent in 1978 to 1.0 percent in 1982. In January-June 1982, French import penetration was 1.4 percent compared to 0.8 percent for the same period one year earlier.¹¹⁶

2. *Pricing and Lost Sales.* Comparable pricing data shows wide variations with margins of underselling by French sheet never in excess of 13 percent and more instances of overselling than underselling.¹¹⁷

Of 17 allegations of lost sales investigated, 13 were confirmed, seven of them due to price.¹¹⁸ Confirmed lost sales covered 3.4 percent of French sales.

3. *Subsidies.* The subsidies reported on French cold-rolled sheet ranged from 3.7 percent to 19.5 percent with a weighted average of 14.3 percent.

B. Italy

1. *Imports.* The volume of Italian imports declined irregularly from 213,000 short tons in 1978 to 55,000 short tons in 1981. During the January-June 1982 period they reached 43,000 tons

compared to a negligible amount for the first half of the previous year.¹¹⁹

As a ratio of U.S. consumption, Italian imports declined from 1.2 percent in 1978 to 0.3 percent in 1981. In January-June 1982 they registered 0.6 percent compared to a share of less than 0.05 percent for the first half of the previous year.¹²⁰

2. *Pricing and Lost Sales.* Comparable pricing data show that Italian cold-rolled sheet undersold the domestic product by a maximum of 8 percent; in a slightly greater number of instances they oversold the domestic product by margins as great as 21 percent.¹²¹

Lost sales data show that one of three allegations checked was confirmed, and it was not attributable to price. The lost sale did not cover even a tenth of one percent of Italian sales during the period.

3. *Subsidies.* The size of subsidies found by Commerce varied from 6.3 to 14.6 percent. No weighted average could be calculated.

C. The Federal Republic of Germany

1. *Imports.* Total German imports declined from 665,000 tons in 1978 to 400,000 tons in 1981. In January-June 1982 their volume reached 166,000 tons compared to 104,000 tons for the same period of 1981.¹²²

The ratio of German imports to apparent consumption declined slightly from 3.0 percent in 1978 to 2.5 percent in 1981. The penetration was 2.5 percent in January-June 1982 compared to 1.2 percent in the same period of 1981.¹²³

However, these data grossly overstate the volume of imports subject to Commerce's final affirmative subsidy determination. Export data suggest that the latter have hovered around a level less than one-fifth of the data given above.

2. *Pricing and Lost Sales.* Comparative pricing data show German imports to have generally oversold the domestic product.

Lost sales information show that only 9 of the 20 allegations checked were confirmed, and none were due to price as the major reason.¹²⁴ Confirmed lost sales covered 0.02 percent of total German sales during the period, January 1980-June 1982.

3. *Subsidies.* Only one German producer of cold-rolled sheet and strip, Stalwerke Peine-Salzgitter AG, was found to be receiving subsidies. Commerce reported them as *de minimis* and would assess them at zero.

¹¹⁰⁻¹¹³ Report at III-30; III-47; and III-32, respectively.

¹¹⁴ Report at III-47.

¹¹⁵⁻¹¹⁸ Report at IV-25; IV-28; IV-42; and IV-43, respectively.

¹¹⁹⁻¹²² Report at IV-25; IV-28; IV-42, and IV-25, respectively.

¹²³⁻¹²⁴ Report at IV-28; IV-43, respectively.

D. Determinations

The absence of any subsidy margins on the subject imports of German steel, as discussed earlier, eliminates them as a source of material injury or threat thereof. Nor would they contribute in any way to material injury from other subject imports. The significant subsidy margins on the French and Italian imports, coupled with the low or negative margins of underselling, lead to the conclusion that the subsidies have been instrumental in causing a cumulated impact of material injury to the weak domestic industry.

VI. Carbon Steel Structural Shapes

A. Belgium¹²⁵

1. *Imports.* Imports of structural shapes from Belgium and Luxembourg¹²⁶ grew from 307,000 short tons in 1978 to 403,000 tons in 1981. In the first half of 1982 their level was 161,000 tons, down from 189,000 tons for the same period of 1981.¹²⁷

Their ratio to U.S. consumption grew from 5.4 percent in 1978 to 6.9 percent in 1981. In January-June 1982 the level was 6.9 percent compared to 6.0 percent for the same period in 1981.¹²⁸

Analysis of export data indicates that roughly half of the total volume originates in each nation.¹²⁹

2. *Pricing and Lost Sales.* Comparable pricing data show margin of 1 to 27 percent by which the Belgian imports generally undersold the domestic product.

Of 25 allegations of lost sales checked, 23 were confirmed, all of which were due to price as the major reason. Confirmed lost sales covered 0.3 percent of Belgian sales.¹³⁰

3. *Subsidies.* Belgian steel was found to benefit from a subsidy of 13.2 percent.

B. France

1. *Imports.* Imports of French structural shapes fell from 99,000 short tons in 1978 to 52,000 tons in 1981. In January-June 1982, their level was 27,000 tons, just 2,000 tons below that for the same period of 1981.¹³¹

The French ratio of apparent U.S. consumption declined from 1.7 percent in 1978 to 0.9 percent in 1981. In January-June 1982, the French penetration was 1.2 percent, compared to 0.9 percent for the same period of one year earlier.¹³²

¹²⁵ Official import data for Belgium and Luxembourg are not separately reported.

¹²⁶ See Report at V-34.

¹²⁷⁻²⁸ See Report at V-29 and V-32, respectively.

¹²⁹ The period for lost sales coverage for Belgium and Luxembourg was January 1980 through December 1981.

¹³⁰ See footnote 46 and Report at V-53.

2. *Pricing and Lost Sales.* Comparable pricing data showed French imports generally underselling the domestic product by margins of 1 to 11 percent.¹³³

Of six allegations of lost sales covered, six were confirmed, all due to price.¹³⁴ The confirmed lost sales covered 0.5 percent of French sales in the period.

3. *Subsidies.* French imports were found to benefit from a subsidy of 11-14 percent.

C. The United Kingdom

1. *Imports.* Imports of structural shapes from the United Kingdom grew irregularly from 72,000 short tons in 1978 to 136,000 tons in 1981. In January-June 1982, 37,000 tons were imported compared to 75,000 tons for the same period of 1981.¹³⁵

The United Kingdom's share of consumption grew from 1.3 percent in 1978 to 2.3 percent in 1981. The penetration in January-June 1982 was 1.6 percent compared to 2.4 percent for the same period of 1981.¹³⁶

2. *Pricing and Lost Sales.* On a small sample, comparable pricing data revealed that U.K. imports undersold the domestic product by 13 percent.¹³⁷

Of 5 allegations of lost sales checked, four were confirmed, all due to price.¹³⁸ The confirmed lost sales covered 2.7 percent of U.K. sales during the period.

3. *Subsidies.* Imports from the United Kingdom were found to benefit from subsidies of 20.3 percent.

D. Luxembourg.

1. *Imports.* The import volumes and ratios for Luxembourg were discussed above with those for Belgium.

2. *Pricing and Lost Sales.* Comparable pricing data revealed a pattern in which the imports undersold the domestic product by generally large margins which ranged from 2 to 38 percent.¹³⁹

Of 24 allegations of lost sales checked, all 24 were confirmed with price cited as the major reason.¹⁴⁰ Confirmed lost sales covered 2.8 percent of imports from Luxembourg.

3. *Subsidies.* Imports from Luxembourg were found to benefit from subsidies ranging in size from 0.5 to 1.5 percent, with a weighted average of about 0.5 percent.

E. The Federal Republic of Germany

1. *Imports.* Total German imports fell from 167,000 tons in 1978 to 109,000 tons in 1981. In January-June 1982, the volume was 62,000 tons compared to 48,000 tons for the same period of 1981.¹⁴¹

¹³¹⁻¹³⁵ Report at V-29; V-32; V-49; V-53; and V-29, respectively.

¹³⁶⁻¹⁴⁰ Report at V-32; V-49; V-53; V-49; and V-53, respectively.

The German share of U.S. consumption declined from 2.9 percent in 1978 to 1.9 percent in 1981. In January-June 1982, the import penetration was 2.7 percent compared to 1.5 percent for the like period of 1981.¹⁴²

However, these figures overstate the magnitude of subject imports because they include imports from German firms found not to be receiving subsidies. A comparison with export data provided by German producers indicates that the degree of overstatement is modest.

2. *Pricing and Lost Sales.* Comparable pricing data revealed a pattern of frequent underselling by the German imports. The margins varied from 1 to 28 percent.¹⁴³

Of 9 allegations of lost sales checked, 8 were confirmed, all with price as the major reason.¹⁴⁴

3. *Subsidies.* Only one German producer of structural shapes, Stahlwerke Rochling-Burbach GmbH was found to receive a subsidy greater than zero percent. It was evaluated at 1.131 percent. Another producer, Stahiwerke Peine-Salzgitter AG, received an affirmative subsidy finding in which the subsidy was officially listed as 0.000. The weighted average of these subsidies on subject steel in 1981 was 0.0 percent.

F. Determinations

Within the meaning of the Act, imports of subsidized German structural shapes cannot possibly contribute to or threaten to contribute to any material injury experienced by the U.S. industry. The vast majority of these imports benefit from a subsidy evaluated at zero, while a tiny portion receive a small subsidy. These facts are played against a picture in which the German steel generally undersells the domestic product by up to 8 percent. The German subsidies cannot possibly have any significance whatsoever in the performance of German imports in the U.S. market.

The reasons for my negative determination on Luxembourg are similar. Though the subsidies are somewhat higher with a weighted average of 0.6 percent, Luxembourg's margins of underselling are even greater. Surely, the insignificant subsidies have accorded these imports no measurable advantage in the market place that they would not have had without the subsidies. Nor is there any real and imminent threat to the U.S. industry that this situation will change. There is no information demonstrating that

¹⁴¹⁻¹⁴⁴ Report at V-29; V-32; V-53; and V-53, respectively.

subsidies will rise above their present levels. The import penetration is stable and there are no indications of a policy of price cutting to gain market share. Structural shapes are also subject to voluntary quotas on production in the EC. The amount of cutbacks has been substantial, and in general, increasing.¹⁴⁵ This has the effect of restraining total production (including that available for export). As in plate, Luxembourg is pledged under the Davignon Plan to end all state subsidies by 1985, and rationalize its steel industry. If successful, this restructuring will result in capacity reductions for most steel products, including structurals.

Finally, I have found the cumulated impact of imports from Belgium, France, and the United Kingdom to be one of material injury to the weakened U.S. industry. The significance of imports from all three countries, which benefit from large subsidies, is manifest when the sizes of the subsidies are compared to the margins of underselling for these imports.

VII. Hot Rolled Carbon Steel Bar from the United Kingdom

A. Imports

Imports of hot rolled bar from the United Kingdom grew irregularly from 88,000 tons in 1978 to 117,000 tons in 1981. For January-June 1982 they stood at 42,000 tons, identical to the level for the same period of 1981.¹⁴⁶

The share of the United Kingdom is apparent. U.S. consumption grew from 1.3 percent in 1978 to 2.6 percent in 1981. For January-June 1982, import penetration stood at 2.4 percent compared to 1.7 percent for the first half of 1981.¹⁴⁷

B. Pricing and Lost Sales

The comparative pricing data on this product line indicate margins of underselling of between 9 and 12 percent.¹⁴⁸ Reports of overselling by the British product are on the record.¹⁴⁹

Of six confirmed lost sales, three were due to price. Confirmed lost sales represented 5.7 percent of U.K. sales.

C. Subsidies

The size of subsidies ranged from 1.88 to 20.33 percent, with a weighted average of about 15 percent (based on 1981 export volumes).

D. Determination

I have determined that subsidized imports of hot-rolled bar from the United Kingdom are causing material injury to

the domestic industry. The major factors included the significance of the subsidies in maintaining the competitiveness of British steel; elimination of the subsidies found by Commerce would have an impact on the ability of the United Kingdom to maintain its market share in competing with a severely injured U.S. industry. The size of the U.K. share in itself is rather small. But that share has increased significance to the extent it is maintained with the aid of large subsidies at a time when the U.S. industry is operating with the specter of daily shut-down decisions.

VIII. These Cases, the Industry, and its Problems

There are some important conclusions and questions to be drawn from the range of individual cases before the Commission in these investigations, and it would be extremely myopic to close these views without taking a longer view of the United States steel industry, of which the five carbon steel product lines before us here form but a segment.

The general perception of this industry is that it is suffering its most severe crisis in modern times, a crisis brought on by the most severe recession since the Great Depression, by years of neglect, and by the successful inroads of imports into once secure markets. All these factors have had a bearing on this investigation. But, unlike the automobile import relief investigation of December 1980¹⁵⁰, the issue before the Commission was not whether imports as a whole are a substantial cause of the industry's problems. Rather, we were to decide whether the specific imports had caused material injury or threatened to do so because of subsidies which Commerce found them to be receiving. These sixteen cases are but a small part of the steel proceedings presently before the Commission. The petitions filed in January 1982 resulted in 92 preliminary investigations, 59 of them countervailing duty and 33 antidumping in nature. That "only" sixteen have been decided at this time is a reflection of the fact that 39 of the 59 countervailing duty cases were ended by negative preliminary determinations by the Commission, three were terminated by Commerce because no final subsidies were found, one was suspended for a time by Commerce, and the surviving antidumping cases are on a slower time track. More recently initiated steel cases on these and other product lines are in progress.

A. Overall Industry Performance

Despite the narrow scope of the present cases, certain overall industry data serve as a necessary background. Aggregate capacity utilization, profit, and employment data for the raw steel melting facilities common to all lines are crucial to understanding industry performance in the individual product lines, and thus, to determinations made on the best available information.

Capacity utilization in raw steel is particularly significant since it measures the common constraint on full simultaneous utilization of all milling operations. There is normally planned excess capacity in the milling operations of any individual product category to allow continuous adjustment of the product mix to maximize aggregate profits on all lines.¹⁵¹

Capacity utilization in U.S. raw steel production in 1978 was 87 percent. The May 1980 cases, which were terminated by the petitions before the conclusion of the final investigations, were conducted when raw steel capacity utilization had just peaked at 88 percent (1979). At that time I concluded that:

* * * with raw material steel operating at what amounts to almost full capacity, it does not appear that the solution to these problems can be found in selling more steel. Rather, the problems of all product lines and the larger industry appear to lie in the price at which the steel is sold and the costs at which it is made, not the quantity produced.¹⁵²

By the time of the February 1982 preliminary determinations, the situation had changed: the U.S. industry had a significant overall volume problem. Since February the steel industry has further declined, and its

¹⁵¹ It is important to note that although the condition of the individual industries cannot be fully understood without reference to data for the overall steel industry, each of the five product categories is in itself a relatively large aggregate. The Commission is charged with the responsibility to assess the impact of subject imports on the domestic production of a like product, available data permitting. Combining all five categories—plus perhaps others not included in these investigations—into a single industry producing all steel would violate the clear meaning of the statutory language of section 771(4)(A) and (D). To do so would fly in the face of consistent Commission practice in all previous steel cases and blunt beyond recognition the meaning of "like product." To date, the product line approach used by the Commission here has been employed in over 200 investigations without objection from the U.S. industry or importers.

There is no substantive for a careful, discriminating approach which makes use of the best available information on the individual product lines as well as the overall industry of which they are components.

¹⁵² See Certain Carbon Steel Products . . . (May 1980), "Statement of Reasons of Commissioner Paula Stern," at 39-71.

¹⁴⁵ See Report at E-6.

¹⁴⁶ ¹⁴⁹ See Report at VI-23; VI-28; VI-33; and VI-34, respectively.

¹⁵⁰ Certain Motor Vehicles * * *, Inv. No. TA-201-44, USITC Pub. No. 110, December 1980.

capacity utilization is presently at 40 percent.¹⁵³

In an industry with high fixed costs, reduced levels of production usually have a rather dramatic impact on profits because the financial breakeven point occurs at a relatively high level of capacity utilization. The data assembled by the staff indicate that it is unlikely that the industry could show any profits on all steel operations if raw steel is at much less than 70 percent capability utilization. For 17 steel producers accounting for 82 percent of U.S. production in 1980, overall operating profits on steel operations as a ratio of net sales fell from 5.0 percent in 1978 to 2.0 percent in 1980. Although 1981 saw a slight recovery,¹⁵⁴ there is no doubt that 1982 will be far more catastrophic.

Carbon steel production is far less profitable to the domestic industry than overall steel operations. Since the banner year of 1978, profits on overall operations of establishments producing carbon steel products have steadily declined, with the exception of 1981. By June 1982 the 926 million dollar profits of 1978 had become staggering losses of 1.2 billion dollars, and that is just for a half-year reporting period. For the first half of 1982, 14 of 20 reporting firms reported losses on their carbon steel operations.

The catastrophic impact of this decline on steelworkers is shared by the huge number of unemployed workers in the industry. Estimates vary between 150,000 and 180,000, perhaps a third of all steel workers in the country.¹⁵⁵

There is no question that the physical and human resources are available to increase enormously the output of this industry in all the product lines before us here.

Weakened State of Steel Industry.—Any industry becomes especially vulnerable to additional injury when it is operating in the red. The steel industry, for the products being dealt with here, is so far below its break-even point that the prospect of continuing huge short-term losses is forcing shutdown decisions, many of which may be long-term in nature.¹⁵⁶ Shut downs

create particularly severe hardships for the affected employees and communities. Because of this unique situation, I have voted affirmative in some cases on imports involving very small shares of the U.S. market in the belief that qualitative decisions on some plant shut downs hang in the balance. This situation reflects the Commission's long-established practice of approaching every investigation with an eye for the salient details of the particular industry. The framework for such considerations is a consistent application of statutory principles.¹⁵⁷

B. Problems of the U.S. Industry

The legislative history of the Act specifically instructs the Commission to take into account causes of injury, other than the subject imports,¹⁵⁸ without weighing those other causes against those of the subsidized imports. These factors include a delayed modernization, the prolonged, deep recession, a non-competitive cost structure, an overvalued dollar, and other foreign competitors not the subject of these investigations.

Prolonged, Deep Recession.—Perhaps the most serious short-range, but increasingly long-lived, problem facing the U.S. steel industry is the sharp drop in demand for its products caused by the continued slump in two major steel end-markets, the automobile and construction industries. This decline in demand is compounded by structural changes within these end-markets, such as the downsizing of automobiles and the use of lighter-weight materials in their construction. If total steel consumption in the United States in 1982 finishes out at the first-half rate, it will be significantly below the *lowest* level recorded in the last decade.

Delayed Modernization.—There has been much discussion about the level of investment undertaken by this industry.

¹⁵⁷ S. Rept. No. 96-249, 1979, at 57 notes that industries facing a multiplicity of problems are "often the most vulnerable to subsidized imports."

¹⁵⁸ Committee on Ways and Means, U.S. House of Representatives, Trade Agreements Act of 1979, H.R. 96-317, 96th Cong., 1st Sess. (1979) at 47.

Of course, in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors.

However, the petitioner will not be required to bear the burden of proving the negative, that is, that material injury is not caused by such other factors, nor will the ITC be required to make any precise, mathematical calculations as to the harm associated with respect to such factors. In short, the Committee does not view overall injury caused by unfair competition, such as dumping, to require as strong a causation link to unfairly competitive imports as would be required for determining the existence of injury under fair trade conditions.

For at least a decade investment levels have been inadequate to keep the U.S. industrial plant modern. Testimony in the January 1982 cases pointed to a capital replacement cycle moving toward fifty years compared to a desirable one of fourteen years.¹⁵⁹ The industry's gains from its most recent upswing—which is now long over—were totally inadequate to sustain a rate of investment necessary to improve significantly this situation. Key investment in new technology continues "waiting for Godot."

Furthermore, a large portion of the total investment that has been undertaken has gone to satisfying stricter mandatory standards for environmental and safety protection.¹⁶⁰ Further investment funds have gone into diversification beyond the traditional bounds of the steel industry.¹⁶¹ While these investments may be socially desirable or economically sound, they have not added in the short run to productivity in the steel industry. All these investment factors—not under the control of steel workers—may also help explain in part why productivity gains of U.S. steel workers have not kept pace with the growth of their wages.

Non-competitive Cost Structure.—Partly as a result of a very effective cost-of-living adjustment negotiated by the United Steel Workers of America and the unexpected increase in the rate of inflation during the last decade, there has been an accelerating growth of wages at a rate far higher than in general manufacturing. In the decade 1971-1981, total cost per hour (payroll and benefits) of wage workers in steel grew at an annual rate of 12.4 percent while productivity grew at 2.0 percent per year. In 1977 steel wages stood at 153 percent of those in general manufacturing. By 1980 this number had grown to 175 percent. The wages of foreign steel workers seem to have remained considerably below those of their U.S. counterparts over the entire decade. For example, in 1980 the English average hourly compensation in steel was about 49 percent of that in the United States, the Japanese rate was 53 percent, the French rate was 62 percent,

¹⁵³ American Metal Market, October 13, 1982, at 4. Figure for week ending October 9, 1982.

¹⁵⁴ The profit data for 1981 in the Report at I-53 are not comparable because they do not include the performance of a firm operating under Chapter XI of the Federal Bankruptcy Act; therefore I have not mentioned them.

¹⁵⁵ American Iron and Steel Institute, from responses from 26 companies representing 85 percent of domestic steel production, reports 134,049 wage workers and 10,737 salaried workers were on lay-off status as of October 16, 1982.

¹⁵⁶ See Report at I-11 and I-12.

¹⁵⁹ Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701-TA-85 (Prel.), USITC Pub. 1206, January 1982, "Views of Commissioner Paula Stern" at 21.

¹⁶⁰ Mandated costs for pollution control and worker safety have been estimated at about \$365 million per year during the 1970s, or about 17 percent of the total annual capital available for investment generated by the U.S. steel industry.

¹⁶¹ An important question underlies the issue of diversification of investments: why has investment in traditional steel making activities been so relatively undesirable for U.S. firms?

and the German rate was 78 percent. Only the Belgian rate approximated that for American steel workers. The gap grew wider in 1981 due to the rise of the dollar.

Wages have not been the only cost problem to this industry. The delayed modernization means that highly-paid U.S. workers are often forced to use obsolete equipment which further drives up unit costs. Additionally, structural changes are occurring in the U.S. economy which have brought the U.S. steel industry additional cost problems. Chief among these is the shift in economic activity from the Northeast and Midwest sections of the country to the Gulf Coast and West. Because the U.S. steel industry is primarily located in the "steel belt" of the Northeast-Midwest, it faces disproportionately high transport costs to the West and Gulf Coasts, where the growth in steel consumption is taking place. These costs have diminished the relative competitiveness of U.S. steel. U.S. producers, as a result, have sometimes been minor players in the Gulf and West Coast markets.

Over-valued Dollar.—The unusually restrictive monetary policy which has raised interest rates to record levels for the past two years has produced a dramatic climb in the value of the dollar. Since the beginning of 1980, the dollar has appreciated about 35 percent against the currencies of the European nations involved in these cases, making their steel relatively cheaper by about 25 percent. In some instances this has been a key factor in enabling the subsidies to produce a competitive edge by bringing relatively less competitive products into the range of serious consideration by U.S. purchasers. Exchange rate changes have also affected foreign producers not the subject of these investigations.

Correlations prepared by staff¹⁶² show an extremely high and statistically significant positive correlation between changes in the relative value of the dollar (sometimes lagged one year), and import penetrations of EC members and Japan.¹⁶³

Other Foreign Competitors.—There is no question that the share of the U.S. consumption of steel mill products supplied from foreign sources has grown beyond any cyclical variations due to phenomena such as relative changes in exchange rates.¹⁶⁴ Over the last decade,

domestic producers have supplied between 87.6 percent of U.S. consumption (1973) and 77.4 percent (January–June 1982). With the exception of 1979, each successive year since 1973 has seen the domestically produced share of the U.S. market decline. The EC share of 7.6 percent in January–June 1982 is about one-tenth above the previous high recorded in 1971. Japan in January–June 1982 is near its previous high share, reached in 1976. Canada has enjoyed slow, steady growth of its share of the U.S. market, and in January–June 1982 is somewhat below its high level of 2.8 percent achieved in 1981. All other foreign sources, however, achieved an all-time high market share of 22.6 percent in January–June 1982 after a record share in 1981. Clearly what is unusual about the present situation is the recent, general, and simultaneous success of virtually all foreign competitors in expanding their shares of the U.S. market. These results are compatible with a significant role being played by the recent appreciation of the U.S. dollar against most other currencies. But they also indicate the growing prominence of newly industrialized countries such as Taiwan, Korea, Brazil, Spain (as well as South Africa) in the international trade in steel. There is a definite shift in comparative advantage underway to nations with newly installed, state-of-the-art technology and cheap labor. The pinch is being felt in Japan and Europe as well as in the United States—particularly in the lower value-added steel products which formed the subject of this investigation.

In this entire picture, the exact strategy (or strategies) of the European producers has not become crystal clear. But the massive efforts expended by staff to examine pricing behavior have produced no hard evidence to show that the Europeans are price leaders or depressing prices in the U.S. market.¹⁶⁵ A much more likely conclusion is that they are seeking to maintain market share while going through a very painful rationalization of their own industry. However, none of my determinations have relied on the success of the Davignon plan for the substance of a conclusion that there was no threat or injury.

C. The Replacement Question and the Wharton Model

¹⁶² The information given in the report under the title "Price suppression, depression" represents only lost revenues on specific transactions. Price suppression/depression is an aggregate market phenomena that can only be demonstrated by data on market prices. The lost revenue information has a bias similar to that discussed on lost sales information.

In the preliminary investigations, I was not able to dismiss "the possibility that some other foreign producer stands to gain if subject imports are reduced."¹⁶⁶ The issue is not a minor one. If the subsidized imports are exclusively replacing other foreign suppliers, rather than U.S. steel firms, *ipso facto*, they could not be causing material injury to the domestic industry. In the hearings, this issue was dubbed the replacement question. No totally adequate methodology for answering it within the time frame and budgets of the parties or the Commission was developed.¹⁶⁷

Econometric work prepared by Professor Lawrence Klein was the first numerical approach to the problem that the Commission has ever received on record. With all its faults—in fact, because of its faults—an examination of Klein's work offers some insights. This is not the proper forum for a detailed econometric critique. But I believe some points merit general attention.

The usefulness of any model requiring econometric estimates depends critically on the quality of the theory it embodies, the data employed in the estimate, and the assumptions made in using the results. The strong points of Professor Klein's work include its use of the respected Wharton macroeconomic model which has an established track record, its reliance on economic theory which allows examination of the effects of price changes on subject imports from the imposition of countervailing duties and results which give estimates for potential revenue gains to U.S. producers from such duties.

But there are serious problems in Klein's work as well. While using the large Wharton model which has a demonstrated reliability, an unproven mini-model was grafted to the larger one to study market share and price behavior in the steel industry as a result of changes in import pricing. No attempt was made to estimate simultaneously supply and demand. Thus, the model did not reflect the very different supply behavior one might expect as capacity utilization varied over wide ranges.¹⁶⁸

¹⁶⁶ See "Views of Commissioner Paula Stern, Certain Steel Products * * *," February 1982, at 118.

¹⁶⁷ In the following I rely heavily on staff work. See Memorandum to Commissioner Stern from Director, Office of Economics, September 27, 1982. Commission economists went to great efforts to secure and examine the Wharton work in detail. Additional runs were performed for the Commission by Wharton.

¹⁶⁸ In fact, Professor Klein in response to my questions at the hearing indicated that the present capacity utilization in the steel industry was below the bottom range of what this model could handle with reasonable accuracy. Hearing Transcript at 449.

¹⁶² See Memorandum to the Chairman from the Director, Office of Economics, October 14, 1982.

¹⁶³ For Japan and Canada, the correlations were higher without a lag indicating a more rapid response to exchange rate changes than found for EC nations.

¹⁶⁴ See Table I-12 in Report at I-35.

None of the three import categories of this study—the EC, Japan, and All Other—adequately matched the subject imports. The product groupings did not match those of these investigations. Further, Klein assumed a full pass-through of all countervailing duties to the price of imports, a very unlikely event given that steel is not inelastically demanded.

Despite these and other faults, I believe the results of his first set of estimates, when adjusted for only a 60 percent pass through of the subsidy, yield estimates that give us ballpark figures for the impact of the subsidies involved. These results, prepared by the staff in cooperation with Wharton Econometrics, indicate that had countervailing duties been imposed in 1981, domestic sales for the U.S. industry might have increased a total of \$300 million on all the products. In absolute terms, this is no small sum. But it represents only 0.54 percent of the \$55.2 billion dollars of net sales reported by the U.S. industry in 1981.¹⁶⁹ Because there is no set of supply or cost functions for this industry on the record, the potential contribution to U.S. steel profits from such duties cannot be calculated. But it can be certain that if duties are assessed, the dent made in the current billion dollar losses of this industry will be a small one.

Presumably in response to the debate on the role of subsidy analysis, Klein submitted two sets of estimates in the final investigations compared to the one in the preliminary. This second set attempts to judge the impact of the subject imports *in toto*, rather than merely the impact of the subsidy. As I have made amply clear, I do not accept the legal theory underlying this. But it is quite interesting that in the original presentation, Klein's professional inclination was to study the subsidies themselves when preparing estimates to demonstrate material injury due to subsidized imports. It is even more interesting that the second set of estimates to study the total impact of imports are virtually worthless because the model simply was not designed to do that.

To study the total impact of imports, the second Klein model attempts to estimate the hypothetical effect on U.S. producers of the total elimination of subject imports. The results are unrealistic: imports of non-EC steel do

not change under elimination, whereas they increase 204,000 tons in the subsidy imposition estimates. This flies in the face of the logical expectation that eliminating subject imports would certainly have a much greater effect on non-EC imports than the mere imposition of duties on EC steel. These bizarre results arise from the model's inability to translate such an elimination into a price change that could be entered into the model. The price of subject steel did not rise or fall, it disappeared! As a result, the modelers decided to keep the average price of steel sold in the United States unchanged, an assumption lacking any economic merit. As a result, the level of non-EC imports, which only responds to price changes in the model, could not change. All of the drop in EC steel sales thus was captured by U.S. producers in the elimination estimates. Thus, the second set of estimates is not in any sense a study of the replacement issue.

It is fortunate that the result-oriented tampering with the non-EC prices produced an absurd result, otherwise the underlying assumptions might not have been so carefully examined. What is to be made of all this? The model as originally set up by Wharton is a good, if somewhat limited, first attempt to study the complex replacement phenomenon and effect of the European subsidies on U.S. steel producers. It ran aground when forced to do something a good economist would be unlikely to suggest: that the appropriate measure of the injury inflicted as a result of unfair subsidies should be the total impact of the imports, rather than the subsidies.¹⁷⁰

D. Employment Effects of the Subsidies

The presence in the record of import share price elasticities for the steel industry afforded the unique opportunity to quantify the employment impact of the subsidies. While any such estimates are fraught with qualifications, they can shed some light on the magnitude of the problem faced by the distressed steelworkers of the United States as a result of the subsidized imports in these cases.

The estimates prepared for me by staff gave the domestic industry its most sympathetic estimate. The import share elasticities were supplied by Wharton Econometrics, active as consultants to a group of U.S. steel firms. A complete pass-through of countervailing duties to the prices of imports was assumed. It was further assumed that U.S. producers would capture all European sales lost as

a result of such duties. The present low U.S. productivity figures were used even though productivity will definitely rise as a result of any such additional sales. These are an heroic set of assumptions which should produce a large overestimate.¹⁷¹

To my astonishment, the total change in U.S. direct employment in the steel product lines if duties had been imposed on *all* the subject steel in 1981 would have been only 2,259 production jobs.¹⁷² This number constitutes less than 1.5 percent of the total number of unemployed steelworkers in the United States.

Incidentally, the total estimated U.S. employment gains from levying duties on all the German imports is 4, absolutely insignificant in these cases, let alone the overall industry.

E. Coverage of Affirmative Determinations

Although I have made affirmative determinations in 9 of the 16 cases, these affirmative determinations cover about four-fifths of the volume of subsidized imports under consideration where there were subsidies found to be greater than zero. This translates into about two-thirds of the volume of imports before the Commission in these cases.

Over 92 percent of the rather small total employment effects of the subsidies as estimated above are covered by my affirmative determinations. This is testimony to the great weight I have given to the perilous overall situation of the industry and its workers.

F. Conclusion

The overall problems of the steel industry have very little to do with the subsidized European imports under investigation. Under a large number of assumptions most generous to the U.S. industry's position, applying duties may affect 1.5 percent of unemployed steel workers, may increase the sales of U.S. firms by less than 1 percent, and possibly forestall some marginal plant closings. To an industry plagued by prolonged, deep recession, delayed modernization, a non-competitive cost structure, and an over-valued dollar, the duties for which I have voted—or even the slightly more extensive ones supported by the majority—are no

¹⁶⁹ See Report at I-39. If the \$55.2 billion were adjusted upward to include the 18 percent of U.S. raw steel uncovered in this total, the sales gain would drop to only 0.54 percent. Using a most generous 100 percent pass-through and Klein's estimate of \$464 million, the estimate of affected sales rises to a still small 0.8 percent.

¹⁷⁰ The results of the total elimination model were presented in testimony before the Commission without a discussion of its underlying assumptions.

¹⁷¹ The estimates are based on 1981 consumption levels, the last year for which there are full-year estimates of figures. If consumption falls yet further, the estimates should be reduced.

¹⁷² To check roughly whether my estimate picked up total direct steel employment effects or just mill employees, I calculated the average total productivity of wage workers in the steel industry in 1981. This yielded an estimate of 2,029 jobs, quite close for a rough approximation.

panacea. Some massive readjustments are necessary in this industry if it is to regain its competitive standing in the long run. But even more crucial in the short run is an end to the worst recession since the Great Depression. In the steel industry, the Great Depression II has already arrived and to blame subsidized imports for any significant share of the problems would be to deceive.

By Order of the Commission:

Kenneth R. Mason,
Secretary.

Issued: November 10, 1982.

Appendix A contained draft views on the definition and condition of the domestic industries.

Appendix A is not being published in the Federal Register.

Appendix B contained Commissioner Stern's Memorandum CO2-F-74 on termination of the investigations.

Appendix B is not being published in the Federal Register.

[FR Doc. 82-32283 Filed 11-24-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in an Action Under the Resource Conservation and Recovery Act and Clean Water Act as Amended by the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 26, 1982, a proposed consent decree in *United States v. Seymour Recycling Corporation, et al.*, Civil Action No. 1P80-457-C was lodged with the United States District Court for the Southern District of Indiana.

This action was originally filed in 1960 under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, against the owners of the Seymour Recycling Hazardous Waste Facility. An amended complaint was filed contemporaneously with the lodging of the Consent Decree. The amended complaint adds new parties to the action and alleges causes of action under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*

The Consent Decree provides that some of the parties of this action who are alleged to be responsible for disposal and release or threatened

releases of hazardous wastes and substances arising out of the presence/ storage, treatment, handling, transportation or disposal of solid and hazardous wastes and substances at Freeman Field Industrial Park near Seymour, Indiana will undertake to fund and insure completion of total surface cleanup of the site. The United States has retained its rights to proceed against all other responsible parties for the remaining cleanup or costs of cleanup and enforcement.

The proposed decree may be examined at the Office of the United States Attorney, 274 U.S. Courthouse, 46 E. Ohio Street, Indianapolis, Indiana 46204, at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Room 1515 Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

The original notice appeared in the Federal Register on October 29, 1982 (47 FR 49107), and the comment period was for ten days expiring on November 8, 1982. To date, the Department has received more than 20 comments from 16 companies. Pursuant to Judicial Order of November 10, 1982, the comment period is extended through November 26, 1982. A hearing on the proposed consent decree is currently scheduled to be held before the United States Court for the Southern District of Indiana on November 30, 1982, at 9:30 a.m., in Indianapolis, Indiana. Comments should be directed to the Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20530, and should refer to *United States v. Seymour Recycling Corporation, et al.*, DOJ Reference #62-26S-19.

Carol E. Dinkins,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-32358 Filed 11-24-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the

Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 15th day of November 1982.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ames Coal Co. (workers).....	Charleston, W. Va.....	11/8/82	11/1/82	TA-W-13,932.....	Coal mining.
Babcock & Wilcox, Power Generation Div. (USWA).....	Canton, Ohio.....	11/10/82	11/8/82	TA-W-13,933.....	Exchangers—heat.
Calgon Corp. (International Chemical Wkrs).....	San Francisco, Calif.....	11/9/82	11/4/82	TA-W-13,934.....	Ingredients, Compounding (chemicals).
Exploration Logging Inc. (workers).....	Sacramento, Calif.....	11/3/82	11/29/82	TA-W-13,935.....	Equipment—Monitoring.
General Electric Co., (LST Foundry) (Pattern Makers League of No. America).....	Erie, Pa.....	11/8/82	11/2/82	TA-W-13,936.....	Castings.
Publicker Industries (Teamsters).....	Philadelphia, Pa.....	11/10/82	11/5/82	TA-W-13,937.....	Alcohol—Denature store materials—Marine terminals.
Republic Steel Corp. Mahoning Valley District (USWA).....	Warren, Ohio.....	10/27/82	11/22/82	TA-W-13,938.....	Steel products.
RMI Co. (OCAWU).....	Ashtabula, Ohio.....	11/8/82	11/3/82	TA-W-13,939.....	Titanium sponge & sodium metal.
Stauffer Chemical Co. (URW).....	Gallipolis Ferry, W. Va.....	11/8/82	11/3/82	TA-W-13,940.....	Retardants—Flame, plasticizers fluids—Hydraulic.
Wheaton Glass Co. (GPPAW).....	Millville, N.J.....	11/8/82	10/27/82	TA-W-13,941.....	Bottles—Cosmetic & pharmaceutical.
ASKO, Inc. American Shear Knife Div. (USWA).....	W. Homestead, Pa.....	11/5/82	11/4/82	TA-W-13,942.....	Devices—Cutting, shearing, industrial & wear plates.
Energy Coal Income Partnership 1981-1 (workers).....	Holden, W. Va.....	11/8/82	10/28/82	TA-W-13,943.....	Coal mining.
Giberson Co. (workers).....	Brunswick, N.J.....	11/3/82	10/12/82	TA-W-13,944.....	Warehouse—Steel steel—Cut.
Gulf & Western Industries, Machintosh Hemphill Div. (USWA).....	Pittsburgh, Pa.....	11/5/82	11/4/82	TA-W-13,945.....	Iron rolls.
Howard Industries, Div. of MSL Industries, Inc. (IBEW).....	Brinkley, Ark.....	11/5/82	11/3/82	TA-W-13,946.....	Motors—Disc, floppy.
Industrial Fabricating & Engineering Co. (company).....	Howell, N.J.....	11/4/82	10/29/82	TA-W-13,947.....	Vessels—Pressure & accessories.
United Technologies—Automotive Group (workers).....	Dearborn, Mich.....	11/5/82	11/3/82	TA-W-13,948.....	Components—Mechanical, electro.

[FR Doc. 82-32083 Filed 11-22-82; 8:45 a.m.]

BILLING CODE 4510-30-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

November 22, 1982.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Monday and Tuesday, December 13-14, 1982. The meeting will be held in Rooms 416 and B-100, Page Building #1, 2001 Wisconsin Avenue, NW., Washington, D.C.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local government, was established by Congress by Pub. L. 95-63, on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of reports as may from time to time be requested by the President or Congress.

The Tentative Agenda is as follows:

Monday, December 13, 1982

Page Building #1, Room 416, 2001 Wisconsin Avenue, NW., Washington, D.C.

9:00 a.m.—10:30 a.m.
Plenary
9:00 a.m.—9:15 a.m.
Announcements
9:15 a.m.—10:30 a.m.
Congressman John Breaux Exclusive Economic Zone
10:30 a.m.—12:30 p.m.
Review and Approval of Marine Transportation Report, Panel Chairman: Don Walsh
12:30 p.m.—1:30 p.m.
Lunch
1:30 p.m.—3:00 p.m.
Plenary
Review and Approval of Coast Guard Report Panel Chairman: Michael R. Naess
3:00 p.m.—5:00 p.m.
Panel Meeting
U.S. Ocean Policy Response to LOS
Chairman: FitzGerald Bemiss
Topic: Panel Work Session
5:00 p.m.
Adjourn

Tuesday, December 14, 1982

Page Building #1, Rooms B-100 and 416, 4001 Wisconsin Avenue, NW., Washington, D.C.

8:30 a.m.—12:00 Noon
Panel Meetings
8:30 a.m.—10:00 a.m.
Hydrology, Chairman: Paul Bock, Room B-100
Topic: Panel Work Session
8:30 a.m.—12:00 Noon
Radioactive Waste Disposal, Chairman: John A. Knauss, Room 416
Topic: Panel Work Session
10:00 a.m.—12:00 Noon
Sea Grant, Chairman: Jack R. Van Lopik, Room B-100
Topic: Panel Work Session
12:00 Noon—1:00 p.m.
Lunch
1:00 p.m.—3:00 p.m.
Plenary
Action Items
Panel Reports
3:00 p.m.
Adjourn

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Dated: November 22, 1982.

Steven N. Anastasion,
Executive Director.

[FR Doc. 82-32408 Filed 11-24-82; 8:45 a.m.]

BILLING CODE 3510-12-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-66)]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Advisory Subcommittee on Structures/Controls Interaction.

DATE AND TIME: December 14, 1982, 9 a.m. to 5 p.m.; December 15, 1982, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Independence Ave., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Deene J. Weidman, National Aeronautics and Space Administration, Code RTM-6, Washington, DC 20546 (202/755-3277).

SUPPLEMENTARY INFORMATION: This ad hoc subcommittee was formed with representation from the three existing advisory subcommittees for the express purpose of reviewing the control and structures interactions problems of large flexible spacecraft. This subcommittee will assess current needs and structural methodology for spacecraft and recommend actions to provide technology needs for the future. The Subcommittee, chaired by Dr. Joseph Garibotti, is comprised of seven members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons, including the Subcommittee members and participants).

Type of meeting

Open

Agenda

- 9 a.m.—Subcommittee Meeting Goals.
- 9:30 a.m.—Review of Air Force Plans for Structures/Controls Related Research.
- 2:15 p.m.—Related Defense Advanced Research Projects Agency (DARPA) Research Plans.
- 3 p.m.—Current Related NASA Research Plans.
- 5 p.m.—Adjourn.

December 15, 1982

- 9 a.m.—Continue Review of NASA Plans.
- 2:15 p.m.—Subcommittee Discussion.
- 5 p.m.—Adjourn.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

November 19, 1982.

[FR Doc. 82-32391 Filed 11-24-82; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 65 to Facility Operating License No. DPR-35 issued to Boston Edison Company (the licensee) which revised the Technical Specifications for operation of the Pilgrim Nuclear Power Station (the

facility) located near Plymouth, Massachusetts. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to provide limiting conditions for operation and surveillance requirements for Scram Discharge Volume (SDV) vent and drain valves and reactor protection system and control rod block SDV level switches.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since it does not involve a significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated August 30, 1982, (2) Amendment No. 65 to License No. DPR-35, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 02360. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 10th day of November 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-32479 Filed 11-24-82; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Granting Relief From ASME Code Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," to Duke Power Company, which revised the

inservice inspection program for the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The ASME Code requirements are incorporated by reference into the Commission's Rules and Regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing volumetric examinations of the piping welds in sections of the containment sump and reactor building spray system piping.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the related Evaluation.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated August 30, 1982, (2) the letter to Duke Power Company dated November 16, 1982, and (3) the Commission's related Evaluation of Relief Request. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 16th day of November 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-32480 Filed 11-24-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 59 to Facility Operating License No. DPR-72, issued to

the Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the City of Tallahassee (the licensees) which revised the Technical Specifications (TSs) for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Florida.

The amendment was authorized by telephone on October 26, 1982, and was confirmed by letter dated October 27, 1982.

The amendment modifies the Technical Specifications to allow the facility to change modes with the intermediate pressure relief line isolation valve replaced with a pipe cap. It was issued on an expedited basis to permit restart of the facility as scheduled by Florida Power Corporation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 26, 1982, (2) the Commission's letter to Florida Power Corporation dated October 27, 1982, (3) Amendment No. 59 to License No. DPR-72, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of November 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4,
Division of Licensing.

[FR Doc. 82-32481 Filed 11-24-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 45 to Facility Operating License No. DPR-64, issued to the Power Authority of the State of New York (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 3 (the facility) located in Buchanan, Westchester County, New York. The amendment is to be implemented within twenty-one days from the date of its issuance.

The amendment revises the plant Technical Specifications to reflect modifications in the facility fire protection system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 20, 1981, (2) Amendment No. 45 to License No. DPR-64, (3) the Commission's Safety Evaluations issued March 6, 1979 and May 2, 1980, and (4) the Commission's letter dated . . . All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the White Plains Public Library, 100 Martin Avenue, White Plains, New York. A copy of items (2), (3) and (4) may be obtained upon request

addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of November, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1,
Division of Licensing.

[FR Doc. 82-32482 Filed 11-24-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-522 and STN 50-523]

In the Matter of Puget Sound Power and Light Co., et al. (Skagit/Hanford Nuclear Power Project, Units 1 and 2); Order Scheduling Prehearing Conference

November 18, 1982.

Pursuant to 10 CFR 2.752, on December 2, 1982, a prehearing conference will be held at the following location: Energy Facility Site Evaluation Council, Building One, 4224 Sixth Avenue, S.E., Lacey, Washington 98504.

The session will begin at 10:30 AM. It will be a joint hearing before the U.S. Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board (ASLB) and the Washington Energy Facility Site Evaluation Council (EFSEC).¹

This conference is scheduled in order that consideration can be given to the following:

- (1) Simplifying and clarifying, if possible, contentions admitted as issues in this proceeding.
- (2) Obtaining stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof.
- (3) Identification of witnesses and the limitation of expert witnesses.
- (4) Discussion of the hearing schedule proposed by the Applicant.
- (5) Any other matters, such as summary disposition procedures, which will aid in the orderly disposition of this matter.

The public is invited to attend this conference. However, limited appearance statements will not be received, but will be heard at any subsequent prehearing conference and/or at the beginning of the evidentiary hearing.

¹The conduct of joint hearings on the Skagit/Hanford Nuclear Power Project, Units 1 and 2, is provided for under the subagreement 2 to the September 6, 1976 Agreements for Cooperation between the State of Washington and United States Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 18th day of November 1982.

It is so ordered.

For the Atomic Safety and Licensing Board.

John F. Wolf, *Chairman,*

Administrative Judge.

[FR Doc. 82-32485 Filed 11-24-82; 8:45 am]

Billing Code 7590-01-M

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority and Watts Bar Nuclear Plant, Units 1 and 2; Order Extending Construction Completion Date

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR-91 and CPPR-92, issued by the Atomic Energy Commission* on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On April 27, 1979, the Tennessee Valley Authority (the applicant) filed a request for an extension of the completion dates. On September 28, 1979, October 30, 1980, April 3, 1981, and September 9, 1982, the applicant submitted additional information and requested a revision to those dates requested in the original submittal. The extension has been requested because construction has been delayed by the following events:

1. Changes in the scope of the projects resulting in part from the accident at Three Mile Island, Unit 2, and the subsequent regulatory actions;
2. Unanticipated delays in construction and progress on preoperational testing;
3. Additional safety-related work associated with requirements for pipe supports and anchors;
4. Modifications to the facility's Westinghouse Model D-3 steam generators; and
5. Allowance for any further contingencies.

This action involves no significant hazards consideration; good cause has been shown for the delays; several of the causes were beyond the control of the applicant; and the requested extension is for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

*Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

The Commission has determined that this action will not result in any significant environmental impact, and pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR-91 is extended from June 1, 1979, to March 1, 1984, and the latest completion date for Construction Permit CPPR-92 is extended from March 1, 1980, to August 1, 1985.

Date of issuance: November 19, 1982.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-32483 Filed 11-24-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 81 to Facility Operating License No. DRP-32 and Amendment No. 82 to Facility Operating License No. DRP-37 issued to Virginia Electric and Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2, respectively, (the facilities), located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to modify reporting and notification requirements related to the instantaneous release rates of gaseous wastes.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice

of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1972.

For further details with respect to this action, see (1) the application for amendments dated October 6, 1982, (2) Amendment Nos. 81 and 82 to License Nos. DRP-32 and DRP-37, and (3) the Commission's related Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 18th day of November, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-32484 Filed 11-24-82; 8:45 am]

BILLING CODE 7590-01-M

Charleston 1886 Earthquake; Public Meeting

On Tuesday, November 30, 1982 from 8:30 a.m. to 4:30 p.m. at the Sheraton Inn, Reston, Virginia, the United States Nuclear Regulatory Commission (USNRC) and the United States Geological Survey (USGS) will have a public meeting to discuss the relevance of the Charleston 1886 earthquake with respect to nuclear power plant safety.

The reason for the meeting is to disseminate information to members of the public interested in the seismic aspects of the licensing process for nuclear power plants. The general public is invited. A general overview of the Charleston 1886 earthquake and its implications will be given from 8:30 a.m. until noon; a discussion will be held from 1:00 p.m. until 4:30 p.m. The purpose of the discussion is to allow interested parties the opportunity to ask questions and state concerns.

For additional information, contact Leon L. Beratan, Chief, Earth Sciences Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301)-427-4370.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 22nd day of November 1982.

For the Nuclear Regulatory Commission.

Robert B. Minogue,
Director, Office of Nuclear Regulatory Research.

[FR Doc. 82-32486 Filed 11-24-82; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Reserves and Reliability Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of regular meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the reserves and Reliability Subcommittee of its Scientific and Statistical Advisory Committee.

DATE: Tuesday, November 30, 1982, 9:15 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 S.W. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 82-32401 Filed 11-24-82; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Order No. 462; Docket No. A83-6]

Nipton, California 92364 (William Huth, Petitioner); Notice and Order of Filing of Appeal

November 19, 1982

On November 15, 1982, the Commission received a letter from William Huth (hereinafter "Petitioner"), concerning alleged United States Postal Service plans to close the Nipton, California post office. Although the letter makes no explicit reference to the Postal Reorganization Act, we believe it should be construed as a petition for review pursuant to § 404(b) of the Act [39 U.S.C. 404(b)]. The petition sets out

the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with the applicable law and its regulations for the closing.

The Petitioner's right to appeal is subject to a 30-day time limit.¹ As such, the Petitioner's letter, postmarked November 12, 1982, was received past that time limit if, in fact, the Postal Service's Final Determination was posted October 12, 1982. However, Petitioner explained that the letter was late because patrons of the Nipton post office did not receive due notice. From the letter, it appears that material questions exist whether the Final Determination was indeed posted in the affected post office, and when such determination was "made available" [404(b)(3), (5)]. The question becomes: whether the patrons of the affected post office received adequate notice of the closing; and, if the determination was made available to them, when this occurred. If, as the Petitioner alleges, it was not available to the patrons on October 12, there may be justification for sending the filing on November 12. We are, therefore, accepting this possibly late-filed petition in order to preserve the Petitioner's right to appeal.

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "ensure that such persons will have an opportunity to present their views."² From the face of the petition it is unclear whether any hearings were held and whether a determination has been made under 39 U.S.C. 403(b)(3). The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.³

Upon preliminary inspection, the petitioner appears to raise the following issues of law:

1. Whether the Postal Service provided the persons served by the Nipton post office with adequate notice of its intent to close the post office as required by 39 U.S.C. 404(b)(1). The Petitioner alleges that the proposal to close was posted at the Mountain Pass and Baker post offices, 28 miles and 50 miles respectively, from Nipton and the

affected post office where the Nipton patrons were unable to see it.

2. Whether the Postal Service complied with section 404(b)(4) which requires the Postal Service to take no action to close the post office until 60 days after its written determination is made available to persons served by the affected post office. The Petitioner alleges that the post office had been closed since May 1980, prior to the notice of Final Determination.

3. Whether the Postal Service gave adequate consideration to the effect-on-service factor [39 U.S.C. 404(b)(2)(C)], in light of the Petitioner's allegation that the postal services provided by a carrier that does not come into Nipton and the nearest post office, are difficult to obtain.

4. Whether the Postal Service gave adequate consideration to the effect-on-community, effect-on-service, and economic savings factors in light of the Petitioner's allegation that information in the notice is incorrect.

Other issues of law may become apparent when the Commission has had the opportunity to examine the record compiled by the Postal Service. The record may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline imposed by 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the determination and record pursuant to § 3001.113 of the rules of practice (39 CFR 3001.113) make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on the Petitioner by the Service.

In briefing the case or in filing any motion to dismiss for want of prosecution in appropriate circumstances the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Commission orders:

(A) The letter of November 12, 1982 from William Huth be construed as a

¹ 39 U.S.C. 404(b)(5). 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-11. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

² 39 U.S.C. 404(b)(1).

³ 39 CFR § 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 58 to the Postal Service upon receipt of each appeal.

petition for review pursuant to section 404(b) of the Act (39 U.S.C. 404(b)).

(B) The Secretary of the Commission shall publish this Notice and Order in the Federal Register.

(C) The Postal Service shall file the administrative record in this case on or before November 30, 1982, pursuant to the Commission's rules of practice (39 CFR 3001.113(a)).

By the Commission.

David F. Harris,

Secretary.

Appendix

Nov. 15, 1982	Filing of Petition.
Nov. 19, 1982	Notice and Order of Filing of Appeal.
Nov. 30, 1982	Filing of record by Postal Service [see 39 CFR 3001.113(a)].
Dec. 6, 1982	Last day for filing of petitions to intervene [see 39 CFR 3001.111(b)].
Dec. 15, 1982	Petitioner's initial brief [see 39 CFR 3001.115(a)].
Dec. 30, 1982	Postal Service answering brief [see 39 CFR 3001.115(b)].
Jan. 15, 1982	(1) Petitioner's reply brief should Petitioner choose to file such brief [see 39 CFR 3001.115(c)]. (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
Mar. 15, 1982	Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 82-32357 Filed 11-24-82; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-11704]

ACF Industries, Inc., Application and Opportunity for Hearing

November 18, 1982.

Notice is hereby given that ACF Industries, Incorporated (the "Applicant") has filed an application pursuant to Section 310 (b) (1) (ii) of the Trust Indenture Act of 1939, as amended (the "ACT"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A., of New York, N.Y. ("Citibank") under two existing indentures and under a new indenture to be qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under the indentures and under the indenture to be qualified.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall,

within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures. The Company alleges that:

1. Applicant was incorporated in 1899, and is engaged among other things in the business of manufacturing and leasing various types of freight cars for use in the railroad industry. Its common shares are held of record by approximately 15,000 persons, and are listed for trading on the New York Stock Exchange. Since its organization, Applicant has issued equipment trust certificates from time to time under a number of separate equipment trust agreements. Five of these equipment trust agreements (Series A, B, J, L and M) required qualification and were qualified under the Act. The remainder of those now outstanding, being 12 in number, involved private placements of equipment trust certificates at various times from 1968 through 1980, and were exempt from qualification under the Act by reason of Section 304(b) thereof, since the equipment trust certificates issued thereunder were exempt from registration under the Securities Act of 1933 (the "1933 Act") by reason of Section 4(2) thereof. Trustees under the equipment trust agreements for the various series are major banks. Heretofore, except as set forth in paragraph 5 hereof, each of the equipment trust agreements qualified under the Act has had trustees different from one another and different from any trustee serving as such under any equipment trust agreement not requiring qualification under the Act.

2. Applicant intends to file shortly with the Commission a registration statement on Form S-3 under the 1933 Act and Rule 415 thereunder with

respect to a proposed future public offering and sale through one or more underwriters of a maximum aggregate of \$40,000,000 principal amount of its equipment trust certificates, to be issued pursuant to an equipment trust agreement or agreements to be qualified under the Act. A copy of the proposed equipment trust agreement, which will be filed as an exhibit to said registration statement, is filed as Exhibit A to the original application, as amended. Schedule I to such agreement will contain a list of railroad equipment to be subjected to the trust having a cost of not less than a specified percentage of the principal amount of the certificates—although such percentage has not yet been determined. Applicant anticipates that, consistent with prior practice in offerings of this type, the aggregate principal amount of the proposed new issue will be approximately 80% to 85% of the total cost of the equipment to be subject to the trust.

In the alternative, and to the extent permissible, applicant intends to file said equipment trust agreement for qualification, and a corresponding statement of eligibility and qualification of trustee on Form T-1, as additional exhibits, via a post-effective amendment, to its registration statement of Form S-3 and Rule 415 under the 1933 Act (Registration No. 2-77875), which became effective on June 16, 1982, with respect to \$150,000,000 of such certificates, \$30,000,000 of which have since been sold pursuant to a supplement dated July 20, 1982, to the prospectus included therein.

3. Applicant desires to appoint Citibank, a national banking association, to act as trustee under a forthcoming series of such certificates to be issued under said equipment trust agreement.

4. Citibank presently is acting as trustee in connection with one of the aforementioned private placements of the Applicant's trust certificates, to wit, under the equipment trust agreement dated as of February 15, 1975, for ACF Industries, Incorporated Equipment Trust Certificates, Series D, in the original aggregate of \$35,000,000 principal amount of which a total of \$18,669,000 remains issued and outstanding at the date hereof, and for one of the aforementioned public offerings under an equipment trust agreement dated as of August 1, 1982 (Series M), the entire original principal amount of which (\$30,000,000) is now outstanding, and as to which an application similar to this one was filed, and a finding of no material conflict

with respect thereto was ultimately made by the Commission.

5. The Series D and the Series M equipment trust certificates are, and the proposed new certificates will be, secured by separate lots of specifically identified railroad cars. In the event that Citibank should have occasion to proceed against the security under either of these trusts, such action would not affect the security, the use of the security or its ability to proceed against the security of either of the other trusts. Accordingly, the existence of the three trusteeships should in no way inhibit or discourage the actions of Citibank as trustee under either of the trusts.

6. The specialized nature of an equipment trust is such that Applicant believes that holders of the equipment trust certificates and Applicant would benefit by having a trustee familiar with the operation of the Applicant's equipment trusts. Also, the Applicant understands that the Commission has granted similar applications with respect to trusteeships under equipment trust agreements for other railroad car lessors where the situations were factually similar to the matter which is the subject of this application.

7. None of Applicant's existing equipment trusts are in default.

8. Applicant has waived (a) notice of hearing, (b) hearing on the issues raised by this application and (c) all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to such application, which is a public document on file in the office of the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C.

Notice is further given that any interested person may, not later than December 7, 1982, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact on law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32457 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19240; SR-Amex-82-12]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 16, 1982.

The American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, NY 10006, submitted on September 23, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to modify the shareholder approval requirements contained in Sections 711-714 and 302 of the Amex Company Guide. Sections 711-713 would be amended to require shareholder approval as a precondition for listing shares to be issued (a) as full or partial consideration for the business or assets of another company if (i) any individual director, officer or substantial shareholder of the listed company has a 5 percent or greater interest (or such persons collectively have a 10 percent or greater interest) in the company or assets to be acquired or in the consideration to be paid in the transaction and the present or potential issuance of common stock could result in an increase in outstanding common shares of 5 percent or more, or (ii) the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding shares of 20 percent or more; and (b) in connection with certain employee stock compensation arrangements that involve specified increase in outstanding stock. In addition, Amex proposes to amend Section 714 to require shareholder approval as a prerequisite to approval of applications to list additional shares to be issued in connection with: (a) a transaction involving (i) the sale or issuance by the company of common stock at a price less than the greater of book or market value which, together with sales by affiliated persons, equals 20 percent or more of presently outstanding stock, or (ii) the sale by the company of 20 percent or more of presently outstanding common stock; or (b) a transaction which will give rise to a "backdoor" listing. Section 714, as amended, would also require that a company consult Amex whenever it is considering issuing a "significant

percentage" of its shares to ascertain whether shareholder approval would be required under the conditions enumerated above. Section 302 would be amended to state that each application to list additional shares would be reviewed by the exchange to determine if shareholder approval is required under Sections 711-714.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19087, September 29, 1982) and by publication in the Federal Register (47 FR 44899, October 12, 1982). No comments were received concerning the filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32450 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01

[Rel. No. 12808; 812-5287]

Compound Cash Trust; Filing of Application

November 15, 1982.

Notice is hereby given that Compound Cash Trust ("Applicant"), 8900 Keystone Crossing, Suite 685, Indianapolis, Indiana 46240, a no-load, open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 23, 1982, and an amendment thereto on October 25, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuing its portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are

summarized below, and such persons are also referred to the application for a further analysis of the provisions of the Act from which an exemption is being sought.

Applicant represents that it is a "money market" fund offering a convenient means of accumulating an interest in a professionally managed portfolio limited to high quality debt instruments maturing in one year or less. Applicant represents that its object is to seek high current income, preservation of capital and maintenance of liquidity. Applicant states that the only instruments in which it will invest are marketable obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities ("U.S. Government Obligations"), domestic bank certificates of deposit fully insured as to principal by the FDIC, and repurchase and reverse repurchase agreements involving such U.S. Government Obligations and insured certificates of deposit.

Applicant states that under the amortized cost valuation method, portfolio instruments are valued at their cost as of the date of acquisition and thereafter assuming a constant rate of amortization to maturity of any discount or premium, regardless of the impact of fluctuating interest rates on the market value of such instruments. It is also stated that, prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that it wishes to attract sophisticated investors, primarily banks for the investment of trust and "sweep" accounts and that most of these investors require an investment company with a portfolio of short-term

debt obligations and which maintains a constant net asset value per share and pays dividends that do not fluctuate due to daily changes in the values of its portfolio securities. Applicant believes that in order to attract such investors and retain them as shareholders, it must have a stable net asset value, preferably \$1.00 per share, and a steady flow of investment income.

Applicant believes that the valuation of the investment securities in its portfolio on the amortized cost basis will benefit its shareholders by enabling it to maintain a \$1.00 price per share while providing shareholders with the opportunity to receive a flow of investment income less subject to fluctuation than under procedures whereby its daily dividend would be adjusted by all realized and unrealized gains and losses on its portfolio securities. Applicant represents that its Board of Trustees has determined that the amortized cost method of calculating its net asset value per share under such circumstances is appropriate and in the best interests of shareholders.

Applicant agrees that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising the operations of Applicant and delegating special responsibilities involving management of its portfolio to Applicant's investment adviser and any sub-investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distributions, redemptions and repurchases, at \$1.00 per share.

2. Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the \$1.00 amortized cost price per share, and maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations, or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value, which may include, inter alia, (1)

quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes the extent of any deviation from the Trust's \$1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio securities prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding or reducing dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year; or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be

maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Trustees determines present minimal credit risks and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, are of comparable quality as determined by the Board of Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 10, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32441 Filed 11-24-82; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 12809; 812-5229]

Financial Reserves Fund (Formerly, Short Term Interest Fund); Filing of Application

November 15, 1982.

Notice is hereby given that Financial Reserves Fund ("Applicant"), 82 Devonshire Street, Boston, Massachusetts 02109, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 30, 1982, and an amendment thereto on October 22, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its assets pursuant to the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete text of the provisions thereof from which an exemption is being sought.

According to the application, Applicant is a "series" money market fund currently consisting of one portfolio (the "Portfolio"), but may offer shares in additional money market series in the future. Applicant represents that each series will be subject to the conditions specified in any order granting the relief requested. Fidelity Management & Research Company will serve as Applicant's investment adviser. It is anticipated that Applicant's shares will be offered by Fidelity Distribution Corporation, the general distributor for Applicant's shares, primarily to prospective investors who have an existing relationship with Ameritrust Company (the "Bank"). Such prospective investors are expected to include those with a custody or agency relationship with the Bank or investors for whom the Bank serves as trustee. Applicant states that the Bank will serve as administrator for Applicant, performing services as custodian of Applicant's assets and transfer, dividend disbursing and shareholders' servicing agent. The Bank will receive a monthly fee at an annual rate of .25% of the average daily net assets of Applicant, plus reimbursement for its out-of-pocket expenses for performing these services. Additionally, the Bank may provide cash management services to such customers by, for example, entering into agreements pursuant to which the Bank would automatically invest excess cash balances of such customers in shares of Applicant or redeem shares for such customers. The Bank may charge a fee to the customers for this service. Applicant represents that the present policy of Applicant is

not to purchase any obligation of the Bank, Ameritrust Corporation or any of their affiliates.

Applicant states that its investment objective is to seek as high a level of current income as is consistent with the preservation of capital and liquidity. According to Applicant, the Portfolio will invest in obligations of major United States banks, prime commercial paper and obligations of the United States Government, its agencies or instrumentalities. It may also enter into repurchase agreements with broker-dealers and banks involving any security in which it is permitted to invest and may purchase new issues of government securities on a "when-issued" basis. Applicant represents that in entering into repurchase agreements and purchasing "when issued" securities it will comply with Investment Company Act Release No. 10666. Applicant further represents that all of its investment will consist of obligations maturing within one year from the date of acquisition and the dollarweighted average portfolio maturity of all of its investment will be 120 days or less.

Applicant states that, prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that it has been management's experience that in order to attract and retain investments, Applicant must have a stable net asset value (preferably at \$1.00 per share) and a constant and steady flow of investment income. Applicant further states that it is believed that the valuation of its portfolio securities on the amortized cost basis will benefit shareholders by enabling Applicant to maintain a constant \$1.00 per share purchase and redemption price, while at the same time providing shareholders with a steady flow of investment income through daily dividends which reflect Applicant's net income as earned.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rule or regulations thereunder, if and to the

extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that its trustees have determined in good faith that, in light of the characteristics of Applicant as described and absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for Applicant and reflects the fair value of such securities. Applicant submits that use of the amortized cost method of valuing its portfolio securities, subject to the conditions enumerated below, will benefit shareholders by enabling Applicant to more effectively maintain the \$1.00 per share purchase and redemption price while simultaneously providing the opportunity for a steadier flow of investment income to shareholders. Applicant believes that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant agrees that the following conditions may be imposed in any order granting the exemptions requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of trustees of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize the net asset value per share of each portfolio, as computed for the purpose of distribution, repurchase and redemption, at \$1.00 per share.

2. Included within the procedures to be adopted by the board of trustees shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the \$1.00 amortized cost price per share, and the maintenance of records of such review.¹

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated.

(c) If the board of trustees believes the extent of any deviation from Applicant's \$1.00 amortized cost price per share for any portfolio may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the average portfolio maturity of the relevant portfolio; withholding dividends; redemption of shares in kind; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar/weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share in each of its portfolios; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days in each portfolio.²

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above; and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes or money market instruments furnished by reputable sources.

² In fulfilling this condition, Applicant agrees that, if the disposition of a portfolio instrument should result in a dollar-weighted average portfolio maturity in excess of 120 days for any of its portfolios, Applicant will invest its available cash in such a manner as to reduce such average maturity for that portfolio to 120 days or less as soon as reasonably practicable.

5. In each of its portfolios, Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which Applicant's board of trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 10, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 32447 Filed 11-24-82; 9:45 am]
BILLING CODE 8010-01

[File No. 22-12004]

Greyhound Corp.; Application and Opportunity for Hearing

November 18, 1982.

Notice is hereby given that The Greyhound Corporation (the

¹ To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of trustees in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of

"Company") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of First Interstate Bank of Arizona, N.A. ("First Interstate") under an indenture of the Company dated as of January 15, 1975 (the "1975 Indenture"), which was heretofore qualified under the Act, and the trusteeship of First Interstate under the indenture of the Company dated as of January 15, 1976 (the "1976 Indenture"), which was not so qualified because of the exemption contained in Section 304(a) of the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest of for the protection of investors to disqualify First Interstate from acting as Trustee under the 1975 Indenture or under the 1976 Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (l) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest is such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (l), there may be excluded from the operation of this provision another indenture under which any other securities of the same issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protective of investors to disqualify such trustee from acting as trustee under either of such indentures.

In support of its application the Company alleges that:

(1) The Company has outstanding on the date hereof 75,000,000 aggregate principal amount of its 9% percent Sinking Fund Debentures due January 15, 2000 (the "9% percent Debentures") issued under the 1975 Indenture executed by Armour and Company ("Armour") and First Interstate as Trustee. The 9% percent Debentures were registered under the Securities Act

of 1933, as amended (File No. 2-52384) and the 1975 Indenture was qualified under the Trust Indenture Act of 1939, as amended. On October 1, 1982, the Company became the successor in interest to Armour by virtue of a merger into itself of Armour. As a result of such merger the Company has assumed the obligations with respect to the 9% percent Debentures. First Interstate is currently acting as Trustee under the 1975 Indenture.

(2) The Company has outstanding on the date hereof \$100,000,000 aggregate principal amount of its 9% percent Sinking Fund Debentures due January 15, 2001 (the "9% percent Debentures") issued under the 1976 Indenture executed by the Company and First Interstate as Trustee. Inasmuch as the 9% percent Debentures were subject to the provisions of Section 20a of the Interstate Commerce Act, the 9% percent Debentures were exempt from registration by the provisions of Section 3(a)(6) of the Securities Act of 1933 and the 1976 Indenture was exempt from qualification by the provisions of Section 304(a)(4) of the Trust Indenture Act of 1939. First Interstate is currently acting as Trustee under the 1976 Indenture.

(3) Section 608 of the 1975 Indenture provides in part as follows:

"(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in this Article.

(b) In the event that the Trustee shall fail to comply with the provisions of Subsection (a) of this Section, the Trustee shall, within 10 days after the expiration of such 90-day period, transmit by mail to all Holders, as their names and addresses appear in the Debenture Register, notice of such failure.

(c) For the Purposes of this Section, the Trustee shall be deemed to have a conflicting interest if

(1) The Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, provided that there shall be excluded from the operation of this paragraph any indenture of indentures under which other securities, or certificates of interest or participation in other

securities, of the Company are outstanding, if

(i) This Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indenture Act, unless the Commission shall have found and declared by order pursuant to Section 305(b) or Section 307(c) of the Trust Indenture Act that differences exist between the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture and such other indenture or indentures, or

(ii) The Company shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;"

The 1976 Indenture has no such provisions as Subparagraphs 608(c)(1)(i) and (ii) contained therein

(4) As a consequence of the Company's assumption of the obligations with respect to the 9% Debentures, First Interstate has acquired a conflicting interest within the meaning of Section 608 of the 1975 Indenture since the 1976 Indenture has not been qualified under the Trust Indenture Act of 1939 and is not the subject of any other proceeding of the Commission.

(5) The 1975 and 1976 Indentures are wholly unsecured and rank equally with each other as the Company's unsecured indebtedness. The only material differences between the 1975 and 1976 Indentures, and between the rights of the holders of the 9% Debentures and 9% Debentures, relate to aggregate principal amounts, interest rates, dates of issue, maturity dates, redemption prices, sinking fund payments, restrictions on indebtedness, guarantees, leases, liens, sales and leasebacks, making loans, payment of dividends, acquisition of certain assets and Company stock, and change in character and disposition of subsidiaries, conditions of merger, conflicting interest of the Trustee, and other provisions of a similar nature.

(6) The Company is not in default under the 1975 Indenture or the 1976 Indenture.

(7) such differences as exist between the 1975 Indenture and the 1976

Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Interstate from acting as trustee under the 1975 Indenture or the 1976 Indenture.

The Company has waived (a) notice of hearing, (b) hearing on the issues raised by the application, and (c) all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than December 14, 1982, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, that the issues of fact or law raised by said Applicant which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32458 Filed 11-24-82; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 22708; 70-6804]

Middle South Services, Inc. and Middle South Utilities, Inc.; Proposed Issuance and Sale of Note to Bank by Subsidiary Service Company and Guaranty by Holding Company

November 15, 1982.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and Middle South Services, Inc. ("Services"), a subsidiary service company of Middle South, have filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

Services proposes to borrow and reborrow, pursuant to a revolving credit agreement ("Credit Agreement") with Citibank, N.A., New York, N.Y. ("Bank"), up to an aggregate principal amount at any one time outstanding not to exceed \$75,000,000. The borrowings will be evidenced by a single master note of Services representing the obligation of Services to pay the amount of the Bank's commitment (\$75,000,000) or, if less, the aggregate unpaid principal amount of all loans made by the Bank thereunder, plus accrued interest. As an inducement to the Bank to make loans to Services under the Credit Agreement, Middle South Proposes to guarantee the payment by Services of the unpaid principal amount of, and interest on, the Note and the performance by Services of its obligations under the Credit Agreement. The effective cost of borrowing under the Credit Agreement as of September 30, 1982, assuming floating rate terms and full utilization of the commitment would equal 10.65%. For the Bank's commitment under the Credit Agreement, Services will pay to the Bank a commitment fee for the period from the effective date to the termination date or earlier termination of the commitment, computed at the rate of $\frac{1}{2}$ of 1% per annum of the average daily unused portion of the commitment. The Effective borrowing cost under the existing line of credit to be repaid was 13.77% as of September 30, 1982.

It is stated that the proceeds of proposed note to the Bank will be used to (a) repay Services' borrowings from First National Bank of Commerce, New Orleans, Louisiana, in an estimated amount of \$47,700,000, (b) finance Services' continuing work on the development of a standard design for future coal-fired electric generating stations for the system, (c) finance the continuing renovation of Services' office facilities in New Orleans, and (d) finance other expenditures in connection with the performance by Services of its functions as a subsidiary service company.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 13, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A

person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended, or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32443 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19235; SR-NYSE-82-15]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 15, 1982.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, N.Y. 10005, submitted on September 24, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend NYSE Rule 301.27 to eliminate the initiation fee otherwise payable to the NYSE in the specific circumstances described in the proposal. Under the proposal, a membership may be transferred under option (c) of an "a-b-c" agreement to a member organization's officer, partner or employee who is not active on the floor of the exchange with payment of the usual initiation fee to the exchange. A second initiation fee will not be due under the proposal upon a retransfer of the membership, within 90 days of this first transfer, to an officer, partner, or employee who is to "work" the membership on the floor of the exchange.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19088, September 29, 1982) and by publication in the *Federal Register* (47 FR 45118, October 13, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32451 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22709; 70-6803]

System Fuels, Inc., et al; Proposed Issuance and Sale of Note to Bank by Subsidiary Fuel Company and Guaranty by Operating Companies

November 15, 1982.

In the Matter of System Fuels, Inc., Noro Plaza, 666 Poydras, New Orleans, Louisiana 70130; Arkansas Power & Light Company, First National Building, Little Rock, Arkansas 72201; Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39201; New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

System Fuels, Inc. ("SFI"), an indirect subsidiary fuel company of Middle South Utilities, Inc., a registered holding company, and its parent companies listed above which are the Middle South system operating companies, have filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

SFI proposes to borrow and reborrow, pursuant to a Revolving Credit Agreement ("Credit Agreement") with Hibernia National Bank in New Orleans ("Bank"), up to an aggregate principal amount at any one time outstanding not to exceed \$60,000,000. The borrowings will be evidenced by a single master note of SFI, representing the obligation of SFI to pay the amount of the commitment (\$60,000,000) or, if less, the aggregate unpaid principal amount of all loans made by the Bank thereunder, plus accrued interest. As an inducement to the Bank to enter into the financing arrangements with SFI, the operating companies propose to join with SFI as parties to the Credit Agreement and to covenant and agree that they will take any and all action as may be necessary to keep SFI in a sound financial condition and to place SFI in a position to discharge, and to cause SFI to discharge, its obligations to the Bank pursuant to the Credit Agreement and the note. The effective cost of borrowing under the Credit Agreement as of

September 30, 1982, assuming fully adjusted 30 day certificates of deposit plus $\frac{1}{8}$ of 1% and full utilization of the commitment, would equal 11.92%. For the Bank's commitment under the Credit Agreement, SFI will pay to the Bank a commitment fee for the period from the effective date to the termination date or earlier termination of the commitment, computed at the rate of $\frac{1}{8}$ of 1% per annum of the average daily unused portion of the commitment. As of September 30, 1982, the borrowing cost under the existing line of credit to be repaid was 13.50%.

It is stated that the proceeds of the proposed note to the Bank will be used to (a) repay any outstanding borrowings of SFI from Citibank, N.A., which borrowings mature on December 31, 1982, and which aggregated \$47,400,000 on August 31, 1982, (b) finance a portion of SFI's fuel oil inventory, (c) finance SFI's acquisition of natural gas, and (d) finance other expenditures in connection with SFI's fuel supply program.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 13, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32442 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19241; File No. SR-OCC-82-23]

Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

November 16, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is

hereby given that on November 3, 1982, the Options Clearing Corporation ("OCC") filed with the Securities Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change allows OCC to amend Article IX, Section 6 of its By-Laws with regard to OCC's fiscal year. More specifically, the proposed rule change would allow OCC to terminate its fiscal year annually on December 31, rather than on June 30, as currently provided by Article IX, Section 6. OCC stated in its filing that, under the proposed rule change, the efficiency of OCC's budgeting and planning programs and its internal recordkeeping and administrative functions would be enhanced, because the proposed fiscal year would coincide with industry practice. OCC further stated that it believes the proposed rule change is consistent with Section 17A of the Act in that the public interest will be served by increasing OCC's administrative efficiency.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before December 17, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-OCC-82-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any

subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32449 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19242; File No. SR-OCC-82-24]

Filing of Proposed Rule Change by Options Clearing Corporation

November 16, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 1982, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would allow OCC's participants to make escrow deposits for short call positions in debt options of Government National Mortgage Association securities ("GNMAs"), U.S. Treasury bills and notes, and bank certificates of deposit ("CDs"). In addition, the proposed rule change expands OCC's Escrow Receipt Depository ("ERD") program to include escrow deposits of these underlying non-equity financial products. ERD currently permits only the deposit of common stocks in respect of equity options. More specifically, the proposal establishes procedures with which banks participating in ERD ("ERD banks") must comply regarding the acceptance and maintenance of escrow deposits of financial products underlying non-equity options. The proposed rule change also incorporates existing criteria governing "good-deliverable form" for deposited debt securities and sets forth the procedures to be followed by ERD banks in the event that the securities become undeliverable. OCC stated in its filing that it believes the proposed rule change is in accordance with Section 17A(b)(3)(F) of the Act because it promotes the prompt and accurate clearance and settlement of debt options transactions.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be

disapproved, interested persons are invited to submit written data, views and arguments concerning the submission on or before December 17, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-OCC-82-24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32448 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer-Kenneth Fogash 202-272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Extension of Clearance: Regulation A, No. 270-110.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of clearance Regulation A under the Securities Act of 1933 which provides a general exemption to the registration provisions of that Act which may be used by a variety of issuers to raise up to \$1.5 million worth of securities during any 12 month period.

The potential respondents are issuers who contemplate selling securities in an unregistered public offering, up to an aggregate amount of \$1.5 million.

Submit comments to OMB Desk Officer: Robert Veeder 202-395-4814.

November 18, 1982.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-32448 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19247; File No. SR-CBOE-81-10]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Restriction on Acting as Market-Maker and Floor Broker

Comments requested on or before December 27, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1981, with amendments on July 10, 1981, and November 9, 1982, the Chicago Board Options Exchange, Incorporated, filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared from materials submitted by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is as follows with additions italicized and deletions in brackets.

Restriction on Acting as Market-Maker and Floor Broker.

Rule 8.8. Except under unusual circumstances and with the prior permission of a Floor Official, no [Market-Maker] *member* shall, on the same business day and with respect to option contracts covering [the same underlying security] *those underlying securities traded at a given station*, act as [such] a *Market-Maker* and also act as a Floor Broker.

. . . Interpretations and Policies

.01 The word "station" means a location on the trading floor, usually a quarter of a trading pose, at which classes of option contracts are traded, which classes of options compose all or part of a Market-Maker appointment. An appointment must at least include all of the classes of options traded at one station. The word "station" is synonymous with the term "trading crowd."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is substantially set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

At present a member who has effected transactions as a market maker is prevented from acting as a floor broker only in the same option class on the same day, which means that in the same trading crowd (in other words, at the same station, as defined in the proposed interpretation) he may make markets in some classes while doing floor brokerage in others. The primary purpose of the proposed rule change is to prevent market makers from acting as floor brokers in the same trading crowd on the same day, thus encouraging market makers to make markets in all classes at an assigned station. The rule change would coordinate with Rules 8.3 and 8.7, which impose market-making obligations on market makers by station. The classes of options traded at a station comprise all or part of a market-maker appointment under those rules.

The proposed revision also would lessen the potential conflict between Rule 8.7 and 8.8. The conflict arises when a market maker has acted as a floor broker in one of the classes of options constituting his appointment. If he is called on to make markets in that class of options pursuant to Rule 8.7, he is obligated to respond; but if he does, he would be in violation of the present version of Rule 8.8.

Finally, the proposed change reduces the potential for an unfair sharing of information between market makers and floor brokers in the same trading crowd. That sharing is difficult to police and could occur as follows. Member A does brokerage in option Y and makes markets in option Z in the same trading crowd, while member B does brokerage in option Z and makes markets in option Y. With respect to options Y and Z, A and B could share information respecting orders in their floor-broker decks that would give them an advantage in their market making. While such information could be shared

from trading crowd to trading crowd, the conduct at issue is more likely to occur in a single trading crowd because of the ease with which the parties can communicate.

Because the revision defines more precisely the roles of market maker and floor broker, encourages market makers to make markets in their appointed classes, and reduces the potential for an unfair sharing of information, all of which are in the public interest, the basis for the proposed revision is section 6(b)(5) of the Securities Exchange Act of 1934.

(B) Self-Regulatory Organization's Statement on Burden on Competition

A member's petition in opposition to this proposed rule change, which petition is quoted in full below, states that the proposed revision " * * * represents a restraint of trade regarding a membership." The revision would prevent members from acting as floor brokers and making markets at the same station on the same business day. This would not prevent a member from acting either as a market maker or a floor broker at any station. He simply, by station, must make a choice to act as one or the other. With options on 141 different underlying securities available, making such a choice by station, which usually involves options in three underlying stocks, has a limited, if any, anticompetitive effect.

Balanced against this possible anticompetitive effect are the benefits that would result from the rule change. These include (1) increased incentive to make markets in all classes at a given station and (2) prevention of possible unfair information-sharing, as are more fully discussed in item three above. If there is any burden on competition, the Exchange believes it is reasonable and is necessary and appropriate under the Securities Exchange Act of 1934. However, the ultimate result of this revision is expected to be greater competition and more liquid markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Approximately 150 members signed a statement in opposition to the proposed rule change. That statement reads as follows:

We wish to state our opinion relative to the proposed rule change regarding a member acting as a floor broker and market maker in the same group of options on the same day.

We feel a member can act as a floor broker in one class of options and act as a market maker in one or more classes

of options on a given day as long as they are not performing a dual function in the same class of options. Not to allow this represents a restraint of trade regarding a membership, and is an unnecessary ex-post-facto proposal that was not intended in the original rules or articles for membership. This appears to create a second-class restricted membership for those involved or those who may wish to do this at some point in time.

There is no reason why someone cannot act in their crowd as both. This is in accordance with our present rules. If there was improper behavior, as in any matter, Floor Officials would bring this to the proper disciplinary proceeding. It would be impossible to watch orders in one crowd (quadrant) and try to market make physically in another. The attempt to remove this potential for income production is not in the best interest of the membership.

In response to this statement the Exchange's Board of Directors called a special meeting of the membership to vote on whether this proposed rule change should be submitted to the SEC. The membership approved the proposed change for filing with the SEC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5

U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 27, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 17, 1982

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-32444 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19252; File No. SR-CBOE-82-19]

**Self-Regulatory Organizations;
Proposed Rule Change By Chicago
Board Options Exchange, Inc.,
Relating to Position Limits**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1982, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of Proposed Rule Change

Additions are italicized; deletions are bracketed.

Position Limits

Rule 4.11. Except with the prior written permission of the President or his designee, no member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction on any exchange in any option contract dealt in on the Exchange if the member has reason to believe that as a result of such transaction the member or its customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of [2,000] 5,000 option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long

positions in call options, or such other number of option contracts as may be fixed from time to time by the Board as the position limit for one or more classes or series of options. Reasonable notice shall be given of each new position limit fixed by the Board, by posting notice thereof on the bulletin board of the Exchange.

*** * * Interpretations and Policies:**

01. The following examples illustrate the operation of position limits established by Rule 4.11:

(a) Customer A, who is long [2,000] 5,000 XYZ calls, may at the same time be short [2,000] 5,000 XYZ calls, since long and short positions in the same class of options (i.e., in calls only, or in puts only) are on opposite sides of the market and are not aggregated for purposes of Rule 4.11.

(b) Customer B, who is long [2,000] 5,000 XYZ calls, may at the same time be long [2,000] 5,000 XYZ puts. Rule 4.11 does not require the aggregation of long call and long put (or short call and short put) positions, since they are on opposite sides of the market.

(c) Customer C, who is long [1,500] 4,500 XYZ calls, may not at the same time be short more than 500 XYZ puts, since the [2,000] 5,000 contract limit applies to the aggregation of long call and short put positions in options covering the same underlying security. Similarly, if Customer C is also short [1,200] 4,200 XYZ calls, he may not at the same time be long more than 800 puts, since the [2,000] 5,000 contract limit applies separately to the aggregation of short call and long put positions in options covering the same underlying security.

Exercise Limits

Rule 4.12. Except with the prior written permission of the President or his designee, no member shall exercise, for any account in which it has an interest or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange where such member or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five consecutive business days aggregate long positions in excess of [2,000] 5,000 option contracts of that class of options or such other number of option contracts as may be fixed from time to time by the Board as the exercise limit for that class of options. Reasonable notice shall be given of each new exercise limit fixed by the Board, by posting notice thereof on the bulletin board of the Exchange.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A) (B), and (C) below.

**(A) Self-Regulatory Organization's
Statement of the Purpose of, and the
Statutory Basis for, the Proposed Rule
Change**

The member petition calling for a special meeting on this subject described the purpose of the proposed rule change as follows: "The above proposed increase in the position and exercise limits is a necessary corollary to the substantial increase in options volume which the options markets have experienced in the past six months. In order to contribute to the maintenance of fair and orderly markets, many Market-Makers need the ability to supply the liquidity which the public has been and is currently demanding of the Exchange market place. So long as a member and its clearing firm believe that such member is financially capable of carrying position of up to 5000 options contracts on one side of the market, such members should be able to contribute to market liquidity to the extent of their Market-Maker obligations. Exchange member reporting and surveillance methodologies are presently comprehensive and sophisticated enough to eliminate the need to use the existing position and exercise limit levels as the means of combating manipulation. There have been few, if any, disciplinary cases where violations of the position or exercise limit rules disclosed manipulative intentions. Consequently, position and exercise limits should be increased to a level where those with Market-Maker obligations, and those Exchange members and members of the public with trading and investment strategies which demand holding sizable positions in light of existing and/or anticipated market activity may satisfy their legitimate needs. The proposed 5000 contract level should provide such satisfaction."

The statutory basis for the proposed rule change is section 6(b)(5) under the Securities Exchange Act of 1934 (the Act), in that the change will contribute

to the maintenance of fair and orderly markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number of the caption above and should be submitted on or before December 17, 1982.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 18, 1982.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32456 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19260; File No. SR-MCC-82-17]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp. Relating to Money Adjustment Capability.

Comments requested on or before December 17, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 12, 1982 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amendment to MCC Rules

Additions italicized—[Deletions Bracketed]

Rule 6, Section 5

*** * * Interpretations and Policies:**

.01 *Where a participant elects to have an amount charged to his account with the Corporation resulting from or in conjunction with transactions in securities, he shall authorize such charge to be made on the form so prescribed. Such charge shall thereupon be effected by the Corporation by charging the amount so demanded and authorized to the account of the participant so authorizing the charge and crediting the account of the participant designated by the participant so authorizing the charge. This money adjustment will be incorporated into a participant's daily money settlement figure.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change enables MCC participants to submit a money adjustment ticket in order to charge the position of the initiating participant and credit the position of the receiving participant for any reason that results from or is in conjunction with transactions in securities. This procedure would eliminate the inconvenience and inefficiency of requiring the physical delivery between participants of a check for due bill payments, option premium payments, etc. Participants would benefit from having these and other money adjustments incorporated into a participant's daily money adjustment figure.

The proposed money adjustment capability is consistent with Section 17A of the Act in that this capability will facilitate the prompt and accurate clearance and settlement of securities transactions, and the safeguarding of securities and funds related thereto, as are necessary for the protection of investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in

furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 17, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 18, 1982.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-32445 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19251; File No. SR-CBOE-82-17]

Chicago Board Options Exchange, Inc., Filing and Immediate Effectiveness of Proposed Rule Change

November 18, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1982, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change modifies the Exchange's policy with respect to the aggregation of option positions for purposes of its position and exercise limit rules. The proposed rule change

indicates that the Exchange will not aggregate option positions in an account in which a member or customer has an interest unless such member or customer exercises control over the particular position.¹ The proposal defines "control" as the ability to make, or to significantly influence, investment decisions respecting an account. The Exchange's Business Conduct Committee will, however, decide the issue of control in specific instances.

The foregoing changes have become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-CBOE-82-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

¹ Previously, CBOE filed a proposed rule change, which became immediately effective pursuant to Section 19(b)(3)(A) of the Act, providing that the Exchange, in aggregating option positions, has been and will continue to consider not only a person's ownership interest in different accounts, but also whether the person is able to exercise control over the positions involved. See Securities Exchange Act Release No. 18845 (June 28, 1982), FR 29045 (July 2, 1982). The present filing goes one step further, effectively establishing control as the determinative factor in making aggregation decisions.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-32453 Filed 11-24-82; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 19249; SR-NASD-82-22]

National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

November 17, 1982.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 29549, submitted, on October 22, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposed rule change consisted of Rules of Practice and Procedure for the Intermarket Trading System ("ITS")/Computer Assisted Execution System ("CAES") automated interface ("ITS/CAES Rules").¹ Under the terms of the Plan governing the operation of the ITS and the ITS/CAES automated interface ("ITS Plan"), the NASD is required to adopt rules governing the manner of participation of CAES users in the ITS/CAES automated interface. On May 6, 1982, the Commission approved temporary ITS/CAES rules submitted by the NASD. Those rules expire on November 17, 1982.² The NASD's proposed ITS/CAES Rules discussed herein were proposed as permanent rules to replace the interim rules now in place.³

¹ The CAES is a computerized order routing and trading facility of the NASD which is made available to NASD members for over-the-counter trading; the ITS is an electronic communication system operated jointly by certain national securities exchanges and the NASD. On May 17, 1982, an automated interface connecting the NASD's CAES and the ITS became operational, pursuant to Commission order. See Securities Exchange Act Release No. 17744 (April 2, 1981), 48 FR 23856 ("Linkage Order"). That order established an initial six month pilot period for the interface.

² In order to ensure prompt commencement of the ITS/CAES interface, the NASD submitted ITS/CAES rules before it had fully resolved a number of important issues bearing on the rules. To allow reconsideration of these issues, the NASD's original ITS/CAES rules were temporary in nature.

³ The expiration of the NASD's interim rules was scheduled to coincide with the expiration of the pilot phase of the ITS/CAES interface. Although the ITS/CAES interface pilot period has been extended until January 15, 1983, because of the pendency of the Commission's proceedings with respect to various order exposure initiatives, see Securities Exchange Act Release No. 19229 (November 9, 1982), the NASD's ITS/CAES Rules are still scheduled to expire on November 17, 1982, and hence must be replaced.

The proposed ITS/CAES Rules provide requirements for registration of ITS/CAES Market Makers, procedures for handling the withdrawal, suspension or revocation of an ITS/CAES Market Makers' registration, and operating procedures to obtain interest from other market centers in ITS/CAES securities prior to the opening of CAES. In addition, the rules contain procedures for correcting trade-throughs of quotations displayed by other ITS markets or CAES market makers,⁴ procedures for responding to trade-through inquiries received from other market centers; requirements prohibiting the entry of a quotation for an ITS/CAES security that locks or crosses the market of another ITS/CAES market maker or ITS participant exchange,⁵ and requirements for the execution of block transactions in ITS/CAES securities. Finally, the proposed rules contain requirements for the clearance and settlement of transactions executed by a particular ITS/CAES market maker.

Notice of the proposed rule change and its terms was given in Securities Exchange Act Release No. 19719 (October 26, 1982), and published in the *Federal Register* (47 FR 49767) on November 2, 1982.⁶ At the time the Commission noted that it was considering the NASD's request for accelerated approval of the rules so that these rules would be effective by the

expiration of the interim rules on November 17, 1982.

The Commission has received one comment on the proposed rules to date, submitted by the New York Stock Exchange, Inc. ("NYSE").⁷ This comment addressed two substantive aspects of the proposed rules: ⁸ First, it criticized the ITS/CAES Rules for creating additional remedies for certain trade-throughs other than those contained in the ITS Exchange Participant trade-through rules; second, it objected to a paragraph in the proposed Rules withholding application of the NASD trade-through rules from markets whose trade-through rules are not substantially similar to those of the NASD.

The ITS/CAES Rules are substantively identical to the ITS Exchange participants rule with regard to trade-throughs involving an agency order.⁹ However, the ITS/CAES Rules provide that when a complaint is received concerning a trade-through involving two ITS/CAES market makers acting as principal, the trade-through can be remedied either by (i) voiding the trade; (ii) the market makers agreeing to correct the trade price to a price at which a trade-through would not have occurred; or (iii) the initiating ITS/CAES market maker (that is, the market maker who directed the order for execution against another market maker's CAES quotation) satisfying the bid or offer traded through in its entirety. The exchange trade-through rules only provide the first remedy, voiding the trade, in the case of principal trades effected on or through the facilities of a participating ITS exchange.

⁷ Letter from James Buck, Secretary, NYSE to George Fitzsimmons, Secretary, SEC, dated November 12, 1982. The NYSE also included its earlier comments on the ITS/CAES rules during the interim period. These comments are available for public inspection at the Commission's Public Reference Room.

⁸ The NYSE also addressed a question raised by the NASD in its filing but not included in the rule: whether the trade-through rules of the Exchange Participants in ITS should protect all displayed quotations in CAES or only the aggregate of the quotations at the best price available in CAES. This point was discussed previously in the ITS Plan Release, *supra* note 4, at 14 n.15, 47 FR 20413, 20417 n.15. Although the NASD's position is not in question in this rule filing, the Commission believes that this position merits serious attention. Accordingly, the Commission believes that the ITS Exchange Participants and the NASD should address this question directly, apart from the continuing discussions regarding intermarket limit order protection, with a view of resolving this issue expeditiously.

⁹ These rules require that when a complaint is received concerning a trade-through involving an agency order, the quotation traded-through should be satisfied or the price of the transaction corrected to a price at which the trade-through would not have occurred, and in either case the customer should get the benefit of the better price.

The NYSE argued that the latter two remedies would detract from the Rule's objective of discouraging trade-throughs by reducing the economic disincentive to trading through inherent in the remedy of voiding the trade.¹⁰ In particular, the NYSE suggested that, because the receiving market maker generally would be unwilling to adjust the trade to a worse price than it had bargained for, the only realistic alternative to voiding the trade was the third remedy, that of satisfying the bid or offer traded-through. The NYSE argued that, given various factors such as the "market maker's own circumstances" and "the likelihood of a complaint", this remedy creates less disincentive to trading-through superior exchange quotations than if the complaint automatically would result in the trade being voided.

The Commission believes that the development of the trade-through rule (and the accompanying block policy) is an important development in the evolution of a national market system. Trade-throughs undermine the ability of market participants to compete effectively for order flow and should be eliminated to the extent practicable. The Commission believes, however, that the goal of avoiding trade-throughs can be achieved without requiring identical rules on the part of all of the ITS participants so long as those rules provide appropriate and effective disincentives against trade-throughs.

The Commission discussed in detail the differences between the NASD trade-through rule and the trade-through rule of the other ITS participants in the ITS Plan Release. At that time, the Commission concluded that the NASD's interim trade-through rule, substantially similar to the present proposed rule, applied "in an appropriate fashion" the concepts of the exchange rules and provided all the basic protections afforded by the exchange participants rules.¹¹ Although it recognized the difference noted by the NYSE, it

¹⁰ The NYSE also suggested that the second remedy, if interpreted to permit changing the price of the trade without changing the substance of the transaction, would eliminate the trade-through rules' economic disincentive to ignoring superior exchange quotations. The Commission understands that this is not the NASD's intent with regard to the Rule and that the Rule would require that the economic consequences of the trade be altered. In any case, if the trade report were changed without changing the economic consequences, such activity would violate Rule 11Aa3-1 under the Act. Moreover, because principal trades are effected on a wholesale basis without mark-ups, fraudulent tape prints, such as those theoretically envisioned by the NYSE, would be readily susceptible to surveillance and disciplinary action.

¹¹ See ITS Plan Release, *supra* note 4, at 16.

⁴ As a general matter, a trade-through occurs when an order is executed in one market center at a price that is inferior to a quotation displayed by another market center. On March 31, 1981, the existing ITS participants submitted to the Commission rules that they had developed on their own initiative, to provide procedures for correcting trade-throughs. The NASD was not an ITS participant when these rules were discussed and agreed upon by the participants, and thus did not participate in those discussions. The ITS Plan was amended at that time to require participants to adopt trade-through rules "substantially the same" as that included as an exhibit to the Plan. See Securities Exchange Act Release No. 17703 (April 3, 1981). Similarly, in the amendments to the ITS Plan including the NASD in ITS, adopted by the Commission in Securities Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413 ("ITS Plan Release"), the NASD was required to adopt requirements incorporating "in an appropriate fashion" the concepts of the trade-through rule included as an exhibit to the ITS Plan; a trade-through rule identical to the exhibit rule was not required.

⁵ A locked market occurs when the published bid of one market center equals the published offer of another market center. A crossed market occurs when the published bid of one market center is higher than the published offer of another market center.

⁶ At the time the NASD's ITS/CAES Rules were noticed, final approval of the rules by the NASD's Board of Governors had not yet been received. The Board approved these proposals on October 28, 1982, as indicated in Amendment No. 1 to SR-NASD-82-22, submitted to the Commission on November 2, 1982.

indicated that slight differences in rules such as this could be justified because of CAES' unique automatic execution capability.

The Commission continues to believe that the NASD's rule is sufficiently similar to the trade-through rule required in the ITS Plan. Although there is substantial merit in having identical trade-through rules for all ITS participants, the Commission has no basis to object to disparities in rules if the proffered rules provide essentially similar disincentives to trade-throughs. The Commission believes that the NASD's rule provides such disincentives. Moreover, while the Commission believes in principal that usage of the national market system should be subject to substantially similar rules, and recognizes that the choice of disincentives for trade-throughs (*i.e.*, voiding the trade versus satisfying the bid or offer traded-through) is subject to debate, the Commission does not believe that, in this limited circumstance, either concern results in the NASD's rules being inconsistent with the purposes of the Act, the statutory standard for review of the NASD's proposed rule change.

In examining the differences between the NASD's rules and those of the participants, the Commission notes that the automatic execution capability of CAES can result in executions taking place automatically at a CAES market maker's quotation at an inferior price without any action on that market maker's part; consequently, it appears reasonable to provide means for the resulting trade-through to be corrected without action on that market maker's part.¹² More importantly, the NASD's additional remedies appear to provide similar economic disincentives to trading-through: in particular the remedy of satisfying the quotation traded-through forces the initiating market maker to execute an additional transaction, trading additional securities at a greater cost than in the trade-through transaction, which in most cases would itself constitute an economic disincentive.¹³ This disincentive

would be all the greater if the market moves away from the quotation during the time of the complaint and satisfaction.¹⁴ Accordingly, the Commission regards the additional trade-through remedies in the NASD ITS/CAES rules as acceptable.¹⁵

The NYSE's second substantive comment on the NASD proposed ITS/CAES rules concerns paragraph (h)(3)(D) of the Rules, which states that the NASD's trade-through rule shall not apply to any participant exchange which does not have in effect a similar rule imposing similar obligations and responsibilities. The NYSE expressed concern that the NASD's reservation of authority concerning the application of its trade-through rules was unwarranted and unnecessary.

While the Commission would be troubled by this paragraph if it were read to entitle the NASD to unilaterally withhold application of its trade-through rule to other markets, the Commission does not interpret this paragraph as granting the NASD authority to withhold application of its trade-through rule to other markets at will. In this regard, the Commission believes that the existing rules of all of the ITS participants do, in fact, impose similar obligations and responsibilities. Therefore, the Commission reads this paragraph as only applying to instances where a market eliminated or radically altered the content of its trade-through rule in a manner inconsistent with the trade-through rule required in the ITS Plan. Accordingly, the Commission believes that the NASD's ITS/CAES Rules, including paragraph (h)(d)(3) if viewed in this manner, is consistent with the requirements of the ITS Plan.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, the requirements of Section 11A and 15A, and the rules and regulations thereunder.

disincentive effect; however, the dependence on a complaint initiating the trade-through procedures is a factor reducing the disincentive effect of the exchange trade-through rules to the same extent as the NASD trade-through rules.

¹⁴ Indeed, the alternative of satisfying the quotation may encourage use of the complaint procedures by other market centers because under this alternative the complainant would receive stock at its quotation price.

¹⁵ The Commission also notes that other remedies besides voiding currently are provided in an informal manner in the context of a trade-through occurring as the result of an ITS transaction between two markets, where, as in CAES, there is no face-to-face interaction before execution.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, in that the NASD's interim ITS/CAES Rules expire on November 17, 1982, and under the terms of the ITS Plan must be replaced immediately in order for the ITS/CAES interface to continue operation. Moreover, since publication of the Commission's notice in the *Federal Register* on November 2, 1982, public commentators have had at least two weeks in which to comment and the only commentator who discussed the interim rules has commented on the proposed permanent rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-32455 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19250; File No. SR-PSE-82-13]

Pacific Stock Exchange, Inc.; Filing of Proposed Rule Change

November 18, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 8, 1982, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change provides for an increase in position and exercise limits to 3,000 contracts.¹ Currently, Section 5 of PSE's Rule VI provides that aggregate option positions may not exceed 2,000 contracts on the same side of the market in the same underlying equity security and Section 6 of Rule VI provides that the aggregate number of equity option contracts of a particular class exercised in any five consecutive days may not exceed 2,000 contracts. PSE contends that the proposed rule change is necessary at this time because there has been an increased use of the options markets and the concomitant

¹² It appears that a trade between two CAES market makers that is consummated on the telephone may involve somewhat different considerations, because of the active involvement of both market makers. Although, as discussed above, the Commission believes that the NASD's rule is an appropriate means of addressing trade-through concerns, it also believes that further discussions between the NASD and the ITS Exchange participants concerning whether those trades should be treated in the same manner as principal trades on an exchange would be appropriate.

¹³ The NYSE identifies the likelihood of a complaint as a factor reducing the NASD Rule's

¹ On October 22, 1980, the Commission approved position and exercise limit increases from 1,000 to 2,000 option contracts. See Securities Exchange Act Release No. 17237.

use of trading strategies involving little or no risk which result in market participants having positions on both sides of the market.²

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Reference should be made to File No. SR-PSE-82-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-32454 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19248; Amendment No. 4 to File No. SR-PHLX-1981-4]

**Self-Regulatory Organizations;
Proposed Rule Change by Philadelphia
Stock Exchange, Inc., Relating to a
Proposal To Establish an Exchange
Market in Standardized Options on
Foreign Currencies on or Before
December 17, 1982.**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15

²The Chicago Board Options Exchange, Incorporated ("CBOE") also has submitted a proposal to increase position and exercise limits for options on equity securities from 2,000 to 3,000 contracts. See Securities Exchange Act Release No. 19200 (November 1, 1982), 47 FR 50793 (November 9, 1982) (File No. SR-CBOE-82-10). The CBOE recently has submitted a second proposal to increase limits to 5,000 contracts. See File No. SR-CBOE-82-19.

U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1982, the Philadelphia Stock Exchange filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**Item I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("PHLX") has proposed to amend Rule 722 to File No. SR-PHLX-1981-4 pertaining to the establishment of an exchange market in standardized options on foreign currencies. The proposed rule change would make clear that all long foreign currency option positions must be fully paid for within 7 business days after the date of purchase. This rule change also would make clear that all margin monies due with respect to foreign currency option positions must be posted within 7 full business days following the date on which the position is entered into or the date on which the position is "marked to market," as the case may be.

In addition, the Commentary to this Rule would be amended to specify the criteria and requirements that banks and trust companies must satisfy before they will be approved by the Exchange to issue letters of credit pursuant to Rule 722(d)2.(H). This Commentary also would be amended to require the Business Conduct Committee to establish a Foreign Currency Options Margin Subcommittee to review, on a continuing basis, the protection afforded by PHLX's foreign currency options margin requirements and to recommend, as it deems advisable, that higher margin be imposed with respect to certain foreign currency option positions.

Item II.

**(A) Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

The changes proposed in Rule 722 are technical in nature and are designed to conform foreign currency option payment and margin requirements to the requirements applicable to other option products. The changes proposed in the Commentary to Rule 722 are designed to assure that letters of credit are issued only by sophisticated and extremely well-capitalized financial institutions and to help assure that PHLX's proposed

foreign currency options margin requirements will provide sufficient protection to PHLX's members even if the volatilities of the underlying foreign currencies should change.

**(B) Self-Regulatory Organization's
Statement on Burden on Competition**

PHLX does not believe that the proposed rule change will impose any burden on competition.

**(C) Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Change Received from
Members, Participants, or Others**

Formal comments on the proposed rule change have not been solicited or received.

**Item III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Item IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 17, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 17, 1982.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-32459 Filed 11-24-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0302]

AMF Financial, Inc.; Issuance of a License to Operate as a Small Business Investment Company

On March 11, 1982, a notice was published in the *Federal Register* (47 FR 13071), stating that AMF Financial, Inc., located at 2657 Vista Way, Suite 5, Ocean Side, California 92054 filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1982), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on March 26, 1982, and no significant comments were received.

Notice is hereby given that considering the application and other pertinent information, SBA has issued License No. 09/09-0302 to AMF Financial, Inc.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 22, 1982.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 82-32437 Filed 11-24-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0253]

Business Capital Corporation of Arlington; Issuance of License to Operate as a Small Business Investment Company

On December 3, 1981, a notice was published in the *Federal Register* (FR 58765), stating that Business Capital Corporation of Arlington located at 1112 Copeland Road, Suite 100, Arlington, Texas 76011, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1981), for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business December 18, 1981, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 06/06-0253 to Business Capital Corporation of Arlington on September 30, 1982, to operate as a small business investment company, pursuant to the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 19, 1982.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 82-32434 Filed 11-24-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0252]

Richardson Capital Corp., Issuance of License To Operate as a Small Business Investment Company

On June 9, 1982, a notice was published in the *Federal Register* (FR 25088), stating that Richardson Capital Corporation, 558 South Central Expressway, Richardson, Texas 75080 had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982), for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business June 24, 1982, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 06/06-0252 to Richardson Capital Corporation on October 26, 1982, to operate as a small business investment company, pursuant to Section 301(c) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 22, 1982.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 82-32438 Filed 11-24-82; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-5217]

Central Georgia Capital Funding Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Central Georgia Capital Funding Corporation (Applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982).

The officers, directors and stockholders of the Applicant are as follows:

Henry E. Downey, President, Director, 24 percent shareholder, 2648 Rex Road, Ellenwood, GA 30049.

Charles Burton Blackmon, Vice President, Director, 24 percent, 100 Ben Horton Drive, McDonough, GA 30253.

Otis Bellamy, Chairman of the Board, Treasurer, 26 percent, 2063 West Panola Road, Ellenwood, GA 30049.

Joel Griffin Patrick, Jr., Secretary, Director, 560 Hawthorne Drive, Fayetteville, GA 30214.

Clifford W. Bellamy, Director, 26 percent, 2017 West Panola Road, Ellenwood, GA 30049.

Richard W. Naylor, Director, 4287 Glengary Drive, N.E., Atlanta, GA 30342.

The Applicant, a Georgia corporation, with its principal place of business at Panola and Fairview Roads, Ellenwood, Georgia 30049 will begin operations with \$500,000 of paid-in capital and paid-in surplus derived from the sale of 5,000 shares of common stock.

The Applicant will conduct its activities primarily in the State of Georgia.

Applicant intends to provide assistance to qualified socially or economically disadvantaged small business concerns.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under this management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Ellenwood, Georgia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 22, 1982.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 82-32436 Filed 11-24-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0318]

Glover Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1982)), for a license to operate as a small business investment company, under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) by:

Applicant: Glover Capital Corporation
Address: 655 Deep Valley Drive, Suite 320, Rolling Hills Estates, California.
Proposed Private Capital: \$500,000.
Area of Operations: State of California.

Officers, Directors and Stockholders:
M. D. Glover, Director; President, 2252 The Terrace, Brentwood, CA 90049.
J. D. Ray, Director; Vice President and General Manager, 1404 Granvia Altamira, Palos Verdes, CA 90274.
M. D. Glover, Jr., Director; Vice President, 6762 Breakers Way, Ventura, CA 93001.

Glover Enterprises, Inc., Sole Shareholder, 100 percent, 655 Deep

Valley Drive, Rolling Hills Ests., CA.
Owned by: M. D. Glover, 62 percent;
M. D. Glover as Trustee of W. H. Glover, Jr., 13 percent; M. D. Glover as Trustee of W. H. Glover Trust, 25 percent.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in the Rolling Hills Estate, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 19, 1982.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 82-32439 Filed 11-24-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0316]

Wells Fargo Equity Corp.; Issuance of License to Operate as a Small Business Investment Company

On August 18, 1982, a notice was published in the *Federal Register* (FR 36063), stating that Wells Fargo Equity Corporation, 475 Sansome Street, San Francisco, California 94111 had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982), for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

Interested parties were given 15 days to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 09/09-0316 to Wells Fargo Equity Corporation on October 29, 1982, to operate as a small business investment company, pursuant to the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

November 19, 1982.

[FR Doc. 82-32435 Filed 11-24-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-82-23]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 16, 1982.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. —, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of

Part 11 of the Federal Aviation Regulations (14 CFR Part 11).
Issued in Washington, D.C., on November 19, 1982.

Richard C. Beitel,
Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket number	Petitioner	Regulations affected	Description of relief sought
17709	Sohio Alaska Petroleum Company	14 CFR Parts 21 and 91	To permit petitioner to dry-lease certain B-727-90 series aircraft from Alaska Airlines (ASA) using ASA's minimum equipment list and continuous airworthiness maintenance program.
23341	Israel Aircraft Industries, Ltd.	14 CFR 25.1305(d)(3)	To permit petitioner to obtain a type certificate for the Westwind Model 1125 without installation of a powerplant instrument to indicate engine rotor system unbalance.
19742	Philippine Airlines, Inc. (PAL)	14 CFR 313(a) and 601(c)	Extension of Exemption No. 2888E to allow petitioner to operate four leased, U.S.-registered B-747 airplanes, N741PR, N742PR, N743PR, and N744PR, using an FAA-approved continuous airworthiness maintenance program and the B-747 master minimum equipment list.
23413	Trans World Airlines	14 CFR 121.652(a) and (c)	To permit petitioner's B-767 Captains who have not served 100 hours as pilot in command in Part 121 operations to operate its B-767 aircraft without increasing the landing weather minimums.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket number	Petitioner	Regulations affected	Description of relief sought disposition
22823	Mr. Dennis R. Anderson	14 CFR 61.155(d)(2)	To permit petitioner to credit all flight time which is logged in the rear cockpit of the USAF F-4 as second in command time toward the 1,500 hours total flight time requirement for an airline transport pilot certificate. Denied 11/16/82.
20771	U.S. Air, Inc.	14 CFR 91.307	To amend Exemption No. 3080 to delete 24 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988; 5 BAC-1-111, and 30 DC 9s; and until not later than January 1, 1985, 17 DC-9 aircraft. Granted 11/8/82.
20583	Tenneco Inc. Aviation	14 CFR 61.58(c)	Renewal of Exemption 3106 which allows petitioner's pilots to complete the Boeing 727-100 24-month pilot-in-command check in an FAA-approved simulator. Granted 11/9/82.
23127	Indianaero, Inc.	14 CFR 135.243(a)	To permit Mr. James W. Doyle, an employee of petitioner, to act as pilot in command of a multiengine aircraft without holding an airline transport pilot certificate. Denied 11/8/82.
23175	Air Transport Assn.	14 CFR 121.433 and 121.441 and Part 121, Appendix F.	To permit qualifying Part 121 carriers to combine recurrent training and proficiency checks for pilots in command into one annual training and proficiency check program. In addition, the line check required by § 121.440 would be administered 6 months subsequent to the annual training and proficiency check sessions in lieu of the recurrent training presently required. Partial grant 11/10/82.
23388	Raleigh Flying Service, Inc.	14 CFR 141.5(b)	To permit petitioner to be issued a pilot school certificate when it has not trained and recommended at least 10 applicants for pilot certification and rating tests within the preceding 24 months. Denied 11/10/82.

[FR Doc. 82-32330 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-13-M

Chicago O'Hare International Airport, Chicago, Ill.; Environmental Impact Statement and Meeting

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for development planned for the next ten year time period at Chicago O'Hare International Airport. In order to ensure that all significant issues related to the proposed action are identified, two scoping meetings will be held at the

FAA offices at 2300 East Devon Avenue, Des Plaines, Illinois. The first meeting will be held on Tuesday, December 14, 1982 at 9:30 a.m. for Federal agencies. The second meeting will be held on Wednesday, December 15, 1982 at 9:30 a.m. for state and local agencies.

FOR FURTHER INFORMATION CONTACT: Jerry Mork, Airports Planner, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

TELEPHONE: (312) 694-7522.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of Chicago Department of Aviation, will prepare an Environmental Impact

Statement (EIS) for development scheduled to occur at Chicago O'Hare International Airport over the next ten years. This development involves the construction of new and/or upgrading of airfield, terminal, and terminal support facilities. The following airfield facilities will be evaluated in the EIS:

- Extension of runways 9L/27R and 14R/32L
- Construction of a second taxiway bridge
- Construction of new taxiways
- Relocation of the inner/outer terminal area taxiways
- New apron construction
- Construction of snow removal facilities

—Acquisition of the military site and demolition and replacement of existing USAF facilities

Listed below are the terminal area projects to be evaluated:

- Construction of a new International Terminal and Concourse
- Expansion of existing terminal buildings
- Construction of a new terminal 1 and new Concourses B/C
- Construction of a commuter concourse
- Construction of a new general aviation facility
- Construction of new cargo complex
- Expansion of the heating and refrigeration plant

Terminal support facilities to be constructed include:

- Terminal area roadway improvements
- Airport ground access improvements
- Construction of a new post office facility
- People mover systems
- Parking facilities

To ensure that full range of issues related to these proposed projects are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Issued in Des Plaines, Illinois, on November 16, 1982.

Peter A. Serini,

Acting Manager, Airports Division, FAA, Great Lakes Region.

[FR Doc. 82-32432 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Campbell County, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Campbell County, Virginia.

FOR FURTHER INFORMATION CONTACT:

Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, telephone: (804) 771-2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T) will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane limited access bypass in Campbell County from existing Route 460 to Airport Road (Route 678). The proposed project will serve east-west traffic

movement to and around the City of Lynchburg.

Alternatives under consideration include: (1) Taking no action (no-build), (2) mass transit, (3) Transportation Systems Management alternative (TSM), (4) constructing a new four-lane roadway from Route 460 (east to Route 681, near Timberlake) to Airport Road, (5) constructing a new four-lane roadway south of and paralleling Route 460 from Route 460 (west of Route 811 in Bedford County) to Airport Road, and (6) constructing a new four-lane roadway south of and paralleling Route 681 from Route 460 (west to Route 681 near Timberlake) to Airport Road. Alternatives 4, 5, and 6 include interchanges at Routes 460, 682, and Airport Road.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: November 17, 1982.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 82-32263 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

Recommended Fire Safety Practices for Rail Transit Materials Selection

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice and request for public comment.

SUMMARY: The Urban Mass Transportation Administration (UMTA)

is issuing for public comment recommendations for testing flammability and smoke emission characteristics of materials used in the construction of rapid rail transit (RRT) and light rail transit (LRT) vehicles. These recommendations are based on the Transportation Systems Center's "Proposed Guidelines for Flammability and Smoke Emission Specifications," which the transit industry, in general, uses on a voluntary basis.

DATE: Comments must be received by January 25, 1983.

ADDRESS: Comments must be submitted to UMTA Docket No. 82-C, U.S. Department of Transportation, Urban Mass Transportation Administration, Room 9228, 400 7th Street SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT:

Lloyd G. Murphy, U.S. Department of Transportation, Urban Mass Transportation Administration, Safety and Security Staff, Room 6431, 400 7th Street SW., Washington, DC 20590, Telephone: (202) 426-2896.

SUPPLEMENTARY INFORMATION:

Comments will be considered to determine if the "Recommended Fire Safety Practices for Transit Materials Selection," should be modified.

Background

The threat of fire in RRT and LRT vehicles is of major concern considering the large number of passengers carried on the vehicles and the high capital investment involved. An analysis, conducted by the Urban Mass Transportation Administration (UMTA), indicated that fire and smoke incidents represent between one and five percent of all rail incidents. Although the occurrence of severe transit fires is rare, the potential for fire is always present, and once ignition occurs and a fire spreads, life threatening situations may develop.

Recent trends in the design and construction of RRT and LRT vehicles have resulted in the increased use of flammable, non-metallic materials such as plastics and elastomers for transit vehicle components. In many instances, these materials are more flammable than the existing materials they replace and, therefore, increase the fire threat in the transit vehicle. This fire threat can

be reduced or limited by minimizing adverse effects from the use of these non-metallic materials in the manufacture of transit vehicles and components. This may be accomplished by considering the materials' flammability and smoke emission characteristics in the materials selection process. The choice of materials in some RRT and LRT vehicles shows that the fire threat associated with these non-metallic materials may not be recognized or appreciated by designers. The flammability and smoke emission characteristics of materials may have been overlooked, and the materials may have been selected for other desirable properties such as wear, impact resistance, maintainability, weight, etc.

In 1973, UMTA, as part of its mission to improve mass transportation, initiated an effort to evaluate and improve fire safety in transit vehicles. In 1974, "Proposed Guidelines for Flammability and Smoke Emission Specifications" of materials used in transit vehicles (Guidelines) were developed by the Transportation Systems Center (TSC) for UMTA. Since that time, these Guidelines have undergone periodic review and updating.

An investigatory report on the Bay Area Rapid Transit District (BARTD) fire of January 17, 1979, by the National Transportation Safety Board, resulted in Safety Recommendation F-79-54 dated August 2, 1979, which recommended that the Urban Mass Transportation Administration promulgate: "minimum fire safety standards for the design and construction of rapid transit vehicles."

Initially, UMTA intended to issue fire safety practices as a regulation; however, as noted in the Semi-annual Regulations Agenda of April 1981, this regulatory action was withdrawn, and the decision was made to publish the fire safety practices in the Federal Register as a recommendation.

Scope

The Recommended Fire Safety Practices for Transit Materials Selection are directed at improving the vehicle interior materials selection practices for the procurement of new vehicles and the retrofit of existing RRT and LRT vehicles. Adoption of these recommended fire safety practices will help to minimize the fire threat in transit vehicles and, thereby, reduce the injuries and damage resulting from vehicle fires.

Recommended Fire Safety Practices for Transit Materials Selection

Application

This document provides recommended fire safety practices for testing the flammability and smoke emission characteristics of materials used in the construction of RRT and LRT vehicles.

Referenced Fire Standards

The source of test procedures listed in Table 1 are as follows:

- (1) Leaching Resistance of Cloth, FED-STD-191A—Textile Test Method 5830

Available from: General Services Administration, Specifications Division, Bldg. 197, Washington Navy Yard, Washington, DC 20407

- (2) Federal Aviation Administration Vertical Burn Test, FAR-25.853

Available from: U.S. Government Printing Office, Washington, DC 20402

- (3) American Society for Testing Materials (ASTM)

- (a) Specification for Gaskets, ASTM C-542

- (b) Surface Flammability of Flexible Cellular Materials Using a Radiant Heat Energy Source ASTM D-3675

- (c) Fire Tests of Building Construction and Materials, ASTM E-119

- (d) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E-162

Available from: American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103

- (4) National Fire Protection Association (NFPA)

- (a) Flooring Radiant Panel Test, NFPA-253

- (b) Smoke Generated by Solid Materials, NFPA-258

Available from: National Fire Protection Association, Batterymarch Park, Quincy, MA 02269

- (5) American Association of Textile Chemists and Colorists, Test (AATCC-86)

Available from: American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, NC 27709

- (6) Electrical Insulation Fire Characteristics, Volume I: Flammability Tests, UMTA-MA-06-0025-79-1, PB-294 840/4WT

Electrical Insulation Fire Characteristics, Volume II: Toxicity, UMTA-MA-06-0025-79-2, PB-294 841/4WT

Available from: The National Technical Information Service, Springfield, VA 22161

In all instances the most recent issue of the document or the revision in effect at the time of request should be employed in the evaluation of the materials specified herein.

Definition of Terms

1. Critical Radiant Flux (CRF) as defined in NFPA 253 is a measure of the behavior of horizontally mounted floor covering systems exposed to flaming ignition source in a graded radiant heat energy environment in a test chamber.

2. Flame spread index (I) as defined in ASTM E-162 is a factor derived from the rate of progress of the flame front (F) and the rate of heat liberation by the material under test (Q), such that $I = F \cdot Q$.

3. Special optical density (D) as defined in NFPA 258 is the optical density measured over unit path length within a chamber of unit volume, produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm² for a specified period of time.

4. Surface flammability denotes the rate at which flames will travel along surfaces.

5. Flaming running denotes continuous flaming material leaving the site of material burning or material installation.

6. Flaming dripping denotes periodic dripping of flaming material from the site of material burning or material installation.

7. Light rail transit (LRT) vehicle means a streetcar-type transit vehicle operated on city streets, semi-private rights-of-way, or exclusive private rights-of-way.

8. Rail rapid transit (RRT) vehicle means a subway-type transit vehicle operated on exclusive private rights-of-way with high-level platform stations.

Recommended Test Procedures and Performance Criteria

(a) The materials used in RRT and LRT vehicles should be tested according to the procedures and performance criteria set forth in Table 1.

(b) Transit properties should require certification that combustible materials to be used in the construction of vehicles have been tested by a recognized independent testing laboratory, and that the results are within the recommended limits.

(c) Although there are no Recommended Fire Safety Practices for

electrical insulation materials, information pertinent to the selection and specification of electrical insulation for use in transit fire environments is contained in the following UMTA reports:

1. Electrical Insulation Fire Characteristics, Volume I, Flammability Tests, December 1978.

2. Electrical Insulation Fire Characteristics, Volume II, Toxicity, December 1978.

BILLING CODE 4910-57-M

TABLE 1. RECOMMENDATIONS FOR TESTING THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF TRANSIT VEHICLE MATERIALS

Category	Function of Material	Test Procedure	Performance Criteria
Seating	Cushion ^{1;2;5*}	ASTM D-3675	$I_s \leq 25$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Frame ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Shroud ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Upholstery ^{1;2;3;5}	FAR 25.853	Flame Time < 10 sec; burn length ≤ 6 inch
		NFPA 258	$D_s(4.0) \leq 250$ coated $D_s(4.0) \leq 100$ uncoated
Panels	Wall ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Ceiling ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Partition ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Windscreen ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	HVAC Ducting ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(4.0) \leq 100$
	Window ^{4;5}	ASTM E-162	$I_s \leq 100$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Light Diffuser ⁵	ASTM E-162	$I_s \leq 100$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
Flooring	Structural ⁶	ASTM E-119	Pass
	Covering ⁷	NFPA 253	C.R.F. $\geq 0.5w/cm^2$
Insulation	Thermal ^{1;2;5}	ASTM E-162	$I_s \leq 25$
		NFPA 258	$D_s(4.0) \leq 100$
	Acoustic ^{1;2;5}	ASTM E-162	$I_s \leq 25$
		NFPA 258	$D_s(4.0) \leq 100$
	Elastomers ¹	ASTM C-542	Pass
Miscellaneous	Exterior Shell ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$
	Component Box covers ^{1;5}	ASTM E-162	$I_s \leq 35$
		NFPA 258	$D_s(1.5) \leq 100$; $D_s(4.0) \leq 200$

*Refers to Notes on Table 1.

BILLING CODE 4910-57-C

Notes

1. Materials tested for surface flammability should not exhibit any flaming running, or flaming dripping.

2. Flammability and smoke emission characteristics should be demonstrated to be permanent by washing, if appropriate, according to FED-STD-191A Textile Test Method 5830.

3. Flammability and smoke emission characteristics should be demonstrated to be permanent by dry-cleaning, if appropriate, according to AATCC-86. Materials that cannot be washed or dry cleaned should so be labeled and should meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

4. For double window glazing, the interior glazing should meet the materials requirements specified herein, the exterior glazing need not meet those requirements.

5. NFPA-258 maximum test limits for smoke emission (specific optical density) should be measured in either the flaming or non-flaming mode, depending on which mode generates the most smoke.

6. Structural flooring assemblies should meet the performance criteria during a nominal test period determined by the transit property. The nominal test period should be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to a safe area. The nominal test period should not be less than 15 minutes. Only one specimen need be tested.

7. Carpeting should be tested in accordance with NFPA-253 with its padding, if the padding is used in actual installation.

Issued on: November 17, 1982.

Arthur E. Teele, Jr.,

Administrator.

[FR Doc. 82-32192 Filed 11-24-82; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

During the period November 12 through November 18, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room

309, 1625 I St. N.W., Washington, D.C. 20220; and to the OMB reviewer listed at the end of entry.

Date Submitted: November 15, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (new submission).

Form Number: 500-6-36.

Type of Submission: New.

Title: VITA Site Information.

Purpose: The information will be used by IRS VITA Coordinators to ensure accurate publicity is given for VITA sites, to enable to be monitored for report submission, to assess coverage, and to enable IRS to conduct site visitations.

OMB Reviewer: Michael Abrahams, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: November 15, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (new submission).

Form Number: 500-6-35.

Type of Submission: New.

Title: VITA/TCF Test Scores.

Purpose: The form will be used by all instructors of VITA/TCF classes to report test scores. The scores are transmitted to the District VITA Coordinator so that the training can be evaluated, the number of volunteers passing is known, and to ensure that notification is made to those failing.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: November 15, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (new submission).

Form Number: 500-6-37.

Type of Submission: New.

Title: VITA Recognition Questionnaire.

Purpose: The information is used to determine which VITA volunteers should be recognized for their efforts and the form of the recognition (e.g., letter or certificate of appreciation). Appropriate recognition encourages continued volunteer support.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: November 15, 1982.

Submitting Bureau: U.S. Customs Service.

OMB Number: 1515-0048.

Form Number: CF 7529.

Type of Submission: Extension.

Title: Carrier Certificate and Release Order.

Purpose: A document which may be used by the importer as evidence of the right to make entry of merchandise not released directly to the carrier by executing a carriers certificate on the form. It shows the Customs inspector that carrier has given the importer right to make entry, i.e. the importer has paid shipping costs, etc.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: November 18, 1982.

Submitting Bureau: Bureau of the Public Debt.

OMB Number: 1535-0020.

Form Number: PD 4633.

Type of Submission: Extension.

Title: Request for Change in Status of Book-Entry Treasury Bill Account.

Purpose: Form is used by depositors who have established a book entry account to request a change to that account.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: November 18, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0183.

Form Number: 4789.

Type of Submission: Extension.

Title: Currency Transaction Report.

Purpose: Financial institutions are required to record the identity of any person who engages in a currency transaction of more than 10,000. They must file a report on Form 4789 within 15 days for most of these transactions. The information is used to check the tax compliance of the person conducting the transaction.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: November 18, 1982.

Submitting Bureau: U.S. Customs Service.

OMB Number: 1515-0009.

Form Number: CF 3495.

Type of Submission: Extension.

Title: Application for Exportation of Articles under Special Bond.

Purpose: A document used by

importers for articles which may be entered temporarily and free of duty under bond and are exported within one year from the date of their importation.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

Departmental Reports Management Officer.

[FR Doc. 82-32382 Filed 11-24-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 228

Friday, November 26, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Occupational Safety and Health Review Commission	14, 15

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, December 3, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing.

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-1707-82 Filed 11-23-82; 10:55 am]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Commission To Hold En Banc Meeting on Access Charge on November 29, 1982 November 19, 1982.

The Commission will hold an En Banc Meeting on the development of an Access Charge. This meeting is designed to give those parties who have filed Comments or Reply Comments to the *Second Supplemental Notice* or *Fourth Supplemental Notice* in CC Docket No. 78-72 an opportunity to summarize and explain their Comments in this docket. The meeting will be held in Commission Meeting Room 856 on November 29, 1982, beginning at 9:30 a.m. The schedule is as follows:

1. (9:00-10:00)

Vermont Public Service Board
Michigan Public Service Commission
Florida Public Service Commission
New York Department of Public Service
NARUC

Each party is allocated 10 minutes and the Commission will have a 10-minute question period.

2. (10:00-11:30)

MCI
USTS
ALTEL
Satelco Inc., Teltec Savings Comm. Co.,
and Tel Systems Mgt. Corp., Jointly
SPCC
Western Union
US Tel.
SBS

Each party is allocated 10 minutes and the Commission will have a 10-minute question period.

3. (11:30-12:40)

Rural Electrification Administration
Aeronautical Radio
Ad Hoc Tel. Users Committee
Consumers Union
Congresswatch
ABC/CBS/NBC, Jointly

Each party is allocated 10 minutes and the Commission will have a 10-minute question period.

Lunch Break, 12:40-2:10.

4. (2:10-3:30)

United Tel.
Michigan Action Group
Centel
Alascom
Rochester Tel.
Continental Tel.
Roseville Tel., Anchorage Tel., and
Northern States Power, Jointly.

Each party is allocated 10 minutes and the Commission will have a 10-minute question period.

5. (3:30-4:30)

GTE
USITA
Rural Telephone Coalition
AT&T

AT&T, as representative of both the Bell Operating Companies and AT&T, is allocated 20 minutes. All other parties are allocated 10 minutes. The Commission will have a 10-minute question period.

Within each panel parties are free to coordinate presentations. Groups within a panel whose interests are similar are welcome to consolidate allowing one representative more time. Inter-panel exchanges, however, cannot be accommodated.

This meeting will be open to the public. For further information contact Robert S. Preece, telephone number (202) 632-9342.

William J. Tricarico,
Secretary, Federal Communications Commission.

[S-1709-82 Filed 11-23-82; 11:10 am]

BILLING CODE 6712-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, November 29, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Metropolitan Bank, a proposed new bank to be located at 320 North Central Avenue, Phoenix, Arizona.

Application for consent to merge:

ComBank/Apopka, Apopka, Florida;
ComBank/Fairvilla, Fairvilla, Florida;
ComBank/Pine Castle, Pine Castle, Florida;
ComBank/Union Park, Union Park, Florida;
ComBank/Winter Park, Winter Park,
Florida; and ComBank/Seminole County,
Casselberry, Florida, insured State
nonmember banks, for consent to merge
with Freedom Savings and Loan
Association, Tampa Florida, a State
chartered stock savings and loan
association, under the charter and title of
Freedom Savings and Loan Association.

Application for consent to merge and establish seven branches:

Newworld Bank for Savings, Boston,
Massachusetts, for consent to merge, under
its charter and title, with Bass River
Savings Bank, South Yarmouth,
Massachusetts, and for consent to establish
the seven offices of Bass River Savings
Bank as branches of the resultant bank.

Recommendation regarding the
liquidation of a bank's assets acquired
by the Corporation in its capacity as
receiver, liquidator, or liquidating agent
of that asset:

Case No. 45,490-L (Amended)—International
City Bank and Trust Company, New
Orleans, Louisiana

Personnel actions regarding
appointments, promotions,
administrative pay increases,
reassignments, retirements, separations,
removals, etc.:

Names of employees authorized to be exempt
from disclosure pursuant to provisions of
subsections (c)(2) and (c)(6) of the
"Government in the Sunshine Act" [5
U.S.C. 552b (c)(2) and (c)(6)].

The meeting will be held in the Board
Room on the sixth floor of the FDIC
Building located at 550 17th Street, N.W.,
Washington, D.C.

Requests for further information
concerning the meeting may be directed
to Mr. Hoyle L. Robinson, Executive
Secretary of the Corporation, at (202)
389-4425.

Dated: November 22, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[S-1704-82 Filed 11-23-82; 9:55 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION**Agency Meeting**

Pursuant to the provisions of the
"Government in the Sunshine Act" (5
U.S.C. 552b), notice is hereby given that
the Federal Deposit Insurance
Corporation's Board of Directors will

meet in open session at 2:00 p.m. on
Monday, November 29, 1982, to consider
the following matters:

Summary Agenda: No substantive
discussion of the following items is
anticipated. These matters will be
resolved with a single vote unless a
member of the Board of Directors
requests that an item be moved to the
discussion agenda.

Disposition of minutes of previous
meetings.

Applications for consent to purchase
assets and assume liabilities and to
establish branches:

Merchants and Farmers Bank, Kosciusko,
Mississippi, for consent to purchase the
assets of and assume the liability to pay
deposits made in Oxford Bank & Trust
Company, Oxford, Mississippi, and for
consent to establish the three offices of
Oxford Bank & Trust Company as branches
of Merchants and Farmers Bank.

Capital City Bank, South Salt Lake, Utah, for
consent to purchase the assets of and
assume the liability to pay deposits made
in the West Valley Branch of Holladay
Bank & Trust, Salt Lake City, Utah, and for
consent to establish that branch as a
branch of Capital City Bank.

Application for consent to transfer
assets in consideration of the
assumption of deposit liabilities:

United Mutual Savings Bank, Tacoma,
Washington, for consent to transfer certain
assets to Island Savings and Loan
Association, Oak Harbor, Washington, a
non-FDIC-insured institution, in
consideration of the assumption of
liabilities for the deposits made in the Port
Angeles Branch of United Mutual Savings
Bank.

Recommendations regarding the
liquidation of a bank's assets acquired
by the Corporation in its capacity as
receiver, liquidator, or liquidating agent
of those assets:

Case No. 45,408-L (Amended)—Banco
Credito y Ahorro Ponceno, Ponce, Puerto
Rico

Case No. 45,499-L (Amended)—Western
National Bank, Santa Ana, California

Recommendation with respect to
payment for legal services rendered and
expenses incurred in connection with
receivership and liquidation activities:

Doval, Munoz, Acevedo, Otero & Trias, Hato
Rey, Puerto Rico, in connection with the
liquidation of Banco Credito y Ahorro
Ponceno, Ponce, Puerto Rico

Reports of committees and officers:

Minutes of actions approved by the standing
committees of the Corporation pursuant to
authority delegated by the Board of
Directors.

Reports of the Division of Bank Supervision
with respect to applications or requests
approved by the Director or Associate
Director of the Division and the various

Regional Directors pursuant to authority
delegated by the Board of Directors.

Discussion Agenda:

Request by the Comptroller of the
Currency for a report on the competitive
factors involved in a proposed merger:

The National Bank and Trust Company of
Norwich, Norwich, New York, and The
National Bank of Oxford, Oxford, New
York.

The meeting will be held in the Board
Room on the sixth floor of the FDIC
building located at 550 17th Street, N.W.,
Washington, D.C.

Requests for further information
concerning the meeting may be directed
to Mr. Hoyle L. Robinson, Executive
Secretary of the Corporation, at (202)
389-4425.

Dated: November 22, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[S-1705-82 Filed 11-23-82; 9:55 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION**Changes in Subject Matter of Agency Meeting**

Pursuant to the provisions of
subsection (e)(2) of the "Government in
the Sunshine Act" (5 U.S.C. 552b(e)(2)),
notice is hereby given that at its open
meeting held at 2:00 p.m. on Monday,
November 22, 1982, the Corporation's
Board of Directors determined, on
motion of Chairman William M. Isaac,
seconded by Director Irvine H. Sprague
(Appointive), with Mr. Doyle L. Arnold,
acting in the place and stead of Director
C. T. Conover (Comptroller of the
Currency), abstaining, that Corporation
business required the withdrawal from
the agenda for consideration at the
meeting, on less than seven days' notice
to the public, of the following matters:

Requests by the Comptroller of the Currency
for reports on the competitive factors
involved in proposed mergers or
consolidations:

The Old National Bank of Martinsburg,
Martinsburg, West Virginia, and The
Citizens National Bank of Martinsburg,
Martinsburg, West Virginia.

North Carolina National Bank, Charlotte,
North Carolina, and Bank of North
Carolina, National Association,
Jacksonville, North Carolina.

By that same vote, the Board
determined that no earlier notice of
these changes in the subject matter of
the meeting was practicable.

On motion of Chairman Isaac,
seconded by Director Sprague,

concurred in by Mr. Arnold, the Board further determined that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,500-L—Western National Bank, Santa Ana, California

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Edwards, Roberts & Winterstein, Oklahoma City, Oklahoma, in connection with the receivership of Penn Square Bank, National Association, Oklahoma City, Oklahoma.

Gable & Gotwals, Tulsa, Oklahoma, in connection with the receivership of Penn Square Bank, National Association, Oklahoma City, Oklahoma.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: November 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1713-82 Filed 11-23-82; 3:19 p.m.]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in the Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 22, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a discussion of differing views on regulatory reporting for savings banks.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: November 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1714-82 Filed 11-23-82; 3:19 pm]

BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION

[Federal Register No. 1637]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 18, 1982 at 10 a.m.

CHANGE IN MEETING: Pursuant to 11 CFR 3.5, the following matter was discussed and acted upon by the Commission:

11 CFR Parts 114.8(c)(2) and 114.8(d) Trade Association Solicitation Authorization

* * * * *

DATE AND TIME: Tuesday, November 30, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Wednesday, December 1, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: *Special Open Meeting* for the consideration of the proposed revisions to the Presidential Primary Matching Fund Regulations and related sections.

* * * * *

DATE AND TIME: Thursday, December 2, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Commission appointment and promotion procedures (non-bargaining unit)
Enforcement of 26 U.S.C. 9012(f) in light of *FEC v. AFC*

Proposed revisions to the Presidential Primary Matching Fund Regulations and related sections

Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Public Information Officer; telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-1715-82 Filed 11-23-82; 4:00 pm]

BILLING CODE 6715-01-M

8

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (47 FR 52266, November 19, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., November 23, 1982.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No. and Company

CAG-48: RP82-51-000, Mid-Louisiana Gas Company

Lois D. Cashell,

Acting Secretary

[S-1706-82 Filed 11-23-82; 10:52 am]

BILLING CODE 6717-01-M

9

FEDERAL MARITIME COMMISSION

TIME AND DATE: December 1, 1982.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Agreement No. 9938-4: Request for extension of the term of approval of association agreement between Companhia de Navegacao Lloyd Brasileiro and Companhia de Navegacao Maritima Netumar.
2. Agreement No. 9902-14: Modification of the Euro Pacific Joint Service Agreement to extend its term of approval; increase its scope; and permit the parties to modify their participation.

CONTACT PERSON FOR MORE

INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1708-82 Filed 11-23-82; 10:57 am]

BILLING CODE 6730-01-M

10

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10:30 a.m., Tuesday, November 23, 1982. The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees. (This item was originally announced for a meeting on November 3, 1982.)

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 23, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1711-82 Filed 11-23-82; 2:54 pm]

BILLING CODE 6210-01-M

11**FEDERAL RESERVE SYSTEM**

Board of Governors

TIME AND DATE: 10 a.m., Wednesday, December 1, 1982.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: November 23, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1712-82 Filed 11-23-82; 2:54 pm]

BILLING CODE 6210-01-M

12**INTERNATIONAL TRADE COMMISSION**

[USITC SE-82-52]

TIME AND DATE: 2:30 p.m., Tuesday, December 7, 1982.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.

3. Ratifications.

4. Petitions and complaints, if necessary: (a) Anhydrous ammonia from Mexico (Docket No. 891).

5. Investigations 701-TA-155/162 (Final) (Steel Products from Spain)—briefing and vote.

6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1710-82 Filed 11-23-82; 11:13 am]

BILLING CODE 7020-02-M

13**NUCLEAR REGULATORY COMMISSION**

DATE: Week of November 22, 1982 (revised).

PLACE: Commissioner's Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: Monday, November 22.

10:30 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6) (replaces Discussion of Proposed Safety Goals and Implementation Plan)

1:30 p.m.

Briefing by Regulatory Reform Task Force—Administrative Proposals (Public Meeting) (as announced)

3:30 p.m.

Discussion of Draft Policy and Planning Guidance for fiscal year 1983 (Public Meeting) (as announced)

Tuesday, November 23:

2:00 p.m.

Affirmation/Discussion and Vote (Public Meeting) (revised items)

a. Pending Commission Proceeding Concerning Renewal of Byproduct Materials License of Self-Powered Lighting, Inc.

b. MVPP's Petition to Commission to Disqualify Staff Attorney from Zimmer Proceeding

c. Offshore Power Systems (additional item)

ADDITIONAL INFORMATION: On November 18 the Commission voted 5-0 to hold Discussion of Management-Organization and Internal Personnel Matters, held that day. On November 18 the Commission voted 5-0 to hold Briefing on USGS Clarification of Seismic Issues, scheduled for November 19.

AUTOMATIC TELEPHONE ANSWERING

SERVICE FOR SCHEDULE UPDATE: (202)

634-1498. Those planning to attend a meeting should verify the status on the day of the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee (202) 634-1410.

November 19, 1982.

Walter Magee,

Office of the Secretary.

[S1703-82 Filed 11-23-82; 9:55 am]

BILLING CODE 7590-01-M

14**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

TIME AND DATE: 10 a.m., December 16, 1982.

PLACE: Suite 316, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE

INFORMATION: Mrs. Patricia Bausell (202) 634-4015.

Dated: November 23, 1982.

[S-1716-82 Filed 11-23-82; 4:00 pm]

BILLING CODE 7600-01-M

15**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

TIME AND DATE: 10 a.m., December 9, 1982.

PLACE: Suite 316, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE

INFORMATION: Mrs. Patricia Bausell (202) 634-4015.

Dated: November 23, 1982.

[S-1717-82 Filed 11-23-82; 4:00 pm]

BILLING CODE 7600-01-M

Environmental Protection Agency

**Friday
November 26, 1982**

Part II

**Environmental
Protection Agency**

**Pharmaceutical Manufacturing Point
Source Category; Effluent Limitations
Guidelines, Pretreatment Standards, and
New Source Performance Standards;
Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 439

[WH- FRL 2229-3]

Pharmaceutical Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing regulations to limit the effluent that pharmaceutical manufacturing facilities may discharge to navigable waters of the United States or to publicly owned treatment works (POTWs). This proposal provides effluent limitations guidelines based on "best practicable technology," "best available technology," and "best conventional technology" and established new source performance standards and pretreatment standards under the Clean Water Act. The intended effect of this action is to reduce the discharge of pollutants by the pharmaceutical manufacturing industry.

DATES: Comments must be submitted by January 25, 1983.

ADDRESS: Send comments in triplicate to Dr. Frank H. Hund, Effluent Guidelines Division, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Attention: EGD Docket Clerk, Pharmaceutical Manufacturing Industry (WH-552). A copy of the supporting information and all public comments submitted in response to this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear), PM-213, (EPA Library), 401 M Street, SW., Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying. Copies of the economic analysis will be available for review in the public record at EPA headquarters and regional libraries. Economic information, including copies of the economic analysis document, may be obtained from Ms. Kathleen Ehrensberger, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Tel. (202) 382-5397.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Dr. Frank H. Hund at the address listed above or by calling (202) 382-7182.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

- I. Legal Authority
- II. Background
 - A. The Clean Water Act
 - B. Prior EPA Regulations
 - C. Overview of the Industry
- III. Scope of this Rulemaking and Summary of Methodology
- IV. Data Gathering Efforts
 - A. Specifics of Technical Study
 - B. Specifics of Economic Study
- V. Sampling and Analytical Program
 - A. Background
 - B. Sampling and Analysis of Industry Wastewater
- VI. Industry Subcategorization
- VII. Available Wastewater Control and Treatment Technology
 - A. Status of In-Place Technology
 - B. Control Treatment Options Considered
- VIII. General Criteria and Selection of Treatment Options and Standards for Limitations
 - A. BPT Effluent Limitations
 - B. BCT Effluent Limitations
 - C. BAT Effluent Limitations
 - D. New Source Performance Standards
 - E. Pretreatment Standards for Existing Sources
 - F. Pretreatment Standards for New Sources
- IX. Regulated Pollutants
 - A. BPT
 - B. BAT
 - C. BCT
 - D. NSPS
 - E. PSES and PSNS
- X. Pollutants and Subcategories Not Regulated
 - A. Pollutants Excluded
 - B. Subcategories Excluded
- XI. Costs and Economic Impacts
 - A. Cost and Economic Impact
 - B. Executive Order 12291
 - C. Regulatory Flexibility Analyses
- XII. Non-Water Quality Aspects of Pollution Control
 - A. Solid Waste
 - B. Air Pollution
 - C. Energy Requirements
- XIII. Best Management Practices
- XIV. Upset and Bypass Provisions
- XV. Variances and Modifications
- XVI. Relationship to NPDES Permits
- XVII. Small Business Administration Financial Assistance
- XVIII. Summary of Public Participation
- XIX. Solicitation of Comments
- XX. OMB Review

Appendices

- A. Abbreviations, Acronyms and Other Terms Used in this Notice
- B. Toxic Pollutants Not Detected in the Treated Effluents of Direct Dischargers
- C. Toxic Pollutants Detected in Treated Effluents of Direct Dischargers: (1) From a Small Number of Sources, (2) Detected in Only Trace Amounts or (3) Sufficiently Controlled by Existing Technologies
- D. Toxic Pollutants Not Detected in the Effluent of Indirect Dischargers
- E. Toxic Pollutants Detected in the Effluent of Indirect Dischargers whose Toxicity and Amount (taken together) is so

Insignificant as not to Justify Developing Pretreatment Regulations

F. Toxic Pollutants Not Excluded from Regulation by Pretreatment Standards

I. Legal Authority

EPA is proposing the regulations described in this notice under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-517) (the "Act"). These regulations also are proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979).

II Background

The preamble describes the legal authority and background, technical and economic bases, and other aspects of the proposed regulations, summarizes comments on a draft technical report circulated during July and August, 1980, and requests for comments on specific areas of interest.

The abbreviations, acronyms, and other terms used in the preamble are defined in Appendix A.

These proposed regulations are supported by EPA's technical conclusions detailed in *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category* and the Agency's economic analysis found in *Economic Impact Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category*.

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" [Section 101(a)]. By July 1, 1977, existing industrial discharges were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" (BPT, [Section 301(b)(1)(A)]). By July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable (BAT), which will result in reasonable further progress toward the national goal of eliminating the discharge of pollutants," [Section 301(b)(2)(A)]. New industrial direct

dischargers were required to comply with Section 306 new source performance standards (NSPS) based on best available demonstrated technology. New and existing dischargers to publicly owned treatment works were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act, pretreatment standards were made enforceable directly against dischargers to POTWs (indirect dischargers).

Although Section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis in the absence of regulations, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The Agency was unable to promulgate many of these toxic pollutant regulations within the time periods stated in the Act. In 1976, EPA was sued by several environmental groups and, in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating, for 21 major industries, BAT effluent limitations, pretreatment standards, and new source performance standards for 65 "toxic" pollutants and classes of pollutants. [See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979).]

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most

significant feature is its incorporation into the Act of many of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "toxic" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Congress added a new Section 304(e) to the Act, authorizing the Administrator to prescribe what have been termed "best management practices" (BMPs) to prevent the release of toxic pollutants from plant-site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biological oxygen demanding pollutants (BOD₅), total suspended solids (TSS), fecal coliform, and pH], and any additional pollutants defined by the Administrator as "conventional" [oil and grease, 44 FR 44501, July 30, 1979].

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first

test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

For "non-toxic," "non-conventional" pollutants, Sections 301 (b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment, or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to modify the existing BPT effluent limitations and to provide effluent limitations for BAT and BCT and to establish NSPS and pretreatment standards for existing and new sources (PSES, PSNS) under Sections 301, 304, 306 and 307 of the Clean Water Act.

B. Prior EPA Regulations

EPA promulgated interim final BPT regulations for the Pharmaceutical Manufacturing Point Source Category on November 17, 1976 (41 FR 50676; 40 CFR Part 439, Subparts A-E). The BPT regulations set monthly limitations for BOD₅ and COD based on percent removals for all subcategories. No daily maximums were established for these two parameters. The pH was set as within the range of 6.0 to 9.0 standard units. The regulation also set an average of daily TSS values for any calendar month for subcategories B, D, and E only. No TSS values were established for categories A and C. Subpart A (the section applicable to the fermentation operations subcategory) was amended (42 FR 6814) on February 4, 1977 to improve the language referring to separable mycelia and solvent recovery. In addition, the amendment allowed the inclusion of spent beers (broths) in the calculation of raw waste loads for subpart A in those instances where the spent beer is actually treated in the wastewater treatment system. These regulations were never challenged and are presently in effect.

C. Overview of the Industry

Pharmaceutical manufacturing has developed into one of today's most profitable industries. Pharmaceutical manufacturers use many different methods and raw materials to create a wide range of products. These products include medicinal and feed grades of all organic chemicals having therapeutic value, whether obtained by chemical synthesis, by fermentation, by extraction from naturally occurring plant or animal substances, or by refining a technical grade product.

The pharmaceutical products, processes, and activities covered by this proposal include:

a. Biological products covered by the U.S. Department of Commerce, Bureau of the Census Standard Industrial Classifications (SIC) Code No. 2831.

b. Medicinal chemicals and botanical products covered by SIC Code No. 2833.

c. Pharmaceutical products covered by SIC Code No. 2834.

d. All fermentation, biological and natural extraction, chemical synthesis, and formulation products which are considered as pharmaceutically active ingredients by the Food and Drug Administration, but are not covered by SIC Code Nos. 2831, 2833, or 2834. [Also products of these types such as citric acid which are not regarded as pharmaceutically active ingredients will be included if they are manufactured by a pharmaceutical manufacturer by processes, and result in wastewaters, which closely correspond to those of a pharmaceutical product.]

e. Cosmetic preparations covered by SIC Code No. 2844 which function as a skin treatment. [This group of preparations does not include products such as lipsticks or perfumes which serve to enhance appearance or to provide a pleasing odor, but do not provide skin care. In general, this would also exclude deodorants, manicure preparations, and shaving preparations which do not primarily function as a skin treatment.]

f. Products with multiple end uses which are attributable to pharmaceutical manufacturing as a final pharmaceutical product, component of a pharmaceutical formulation, or a pharmaceutical intermediate. Products which have non-pharmaceutical uses may also be covered entirely by this point source category provided that the product(s) was primarily intended for use as a pharmaceutical.

g. Pharmaceutical research which includes biological, microbiological, and chemical research, product development, clinical and pilot plant activities. [This does not include farms which breed, raise and/or hold animals for research at another site. This also does not include ordinary feedlot or farm operations utilizing feed which contains pharmaceutically active ingredients.]

A number of products and/or activities such as surgical and medical instruments and medical laboratory activity are not part of the pharmaceutical manufacturing category. A descriptive listing of the products and/or activities which are specifically excluded from the pharmaceutical manufacturing category may be found in Section II of the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance*

Standards and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category. These products and/or activities are not covered under the Consent Decree.

EPA has identified 464 potential pharmaceutical facilities in the United States and its possessions. EPA's survey of these 464 facilities showed that about 70 percent of the plants with a significant waste discharge are located east of the Mississippi River within the United States. Older plants appear mainly in the Northeast and Midwest while new facilities tend to be built in the nation's "Sun Belt." Puerto Rico contains almost 10 percent of the total number of pharmaceutical facilities and is developing into a major center for pharmaceutical production.

Pharmaceutical manufacturers use four major kinds of manufacturing activity: namely fermentation, biological and natural extraction, chemical synthesis, and formulation, in the creation of their products. Over half of the pharmaceutical facilities surveyed (271) perform only formulation, a smaller number (47) are involved only in chemical synthesis, and a total of 42 plants use both chemical synthesis and formulation. The remainder of the plants perform fermentation, biological or natural extraction, or a combination of operations.

With respect to wastewater discharge from pharmaceutical facilities, 10 percent of the industry are direct dischargers, 53 percent are indirect dischargers, 21 percent are zero dischargers and 16 percent utilize more than one mode of wastewater discharge.

The wastewater discharges of pharmaceutical manufacturing facilities are not entirely related to the particular processes used. A significant portion of the wastewater from all four general process operations (fermentation, extraction, chemical synthesis and formulation) may consist of washwater from floor and equipment cleaning, spills from bulk processing, spent raw materials and non-contact cooling water. In addition, some wastewater may be generated as a result of the specific requirements of a particular process (e.g., air scrubber wastewater from some extraction operations). Generally, formulation operations require less water use than the other processes and, in some cases, require very little or no water use.

The most commonly found pollutants or pollutant parameters in the effluent of pharmaceutical manufacturing facilities are: (1) toxic pollutants (cyanide, benzene, phenol, chloroform, ethylbenzene, methylene chloride, toluene, chromium, copper, lead,

mercury, nickel, and zinc); (2) conventional pollutants (BOD₅, TSS, and pH), and (3) the nonconventional pollutant COD.

In addition to their adverse effects on water quality, aquatic life, and human health, these and other chemical constituents contribute to equipment corrosion, hazardous gas generation, treatment plant malfunctions, and possible problems in disposing of sludges containing toxic chemicals.

A more complete discussion of the water use and wastewater characteristics, which are characteristic of the main manufacturing operations can be found in Section III of the proposed development document.

III. Scope of this Rulemaking and Summary of Methodology

These proposed regulations significantly expand the water pollution control requirements for the pharmaceutical industry. In EPA's initial rulemaking (November 1976), emphasis was placed on the achievement of BPT by July 1, 1977. In general, this technology level represents the average of the best performances of well-known technologies for control of familiar ("classical") pollutants from direct dischargers.

In this round of rulemaking, EPA's efforts are directed toward amending BPT based on a more complete data base and instituting BCT and BAT effluent limitations, new source performance standards, and pretreatment standards for existing and new sources that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants ("classical" and toxic). As a result of the Clean Water Act of 1977, emphasis has shifted from control of "classical" pollutants to control of a lengthy list of toxic pollutants.

In the first phase of its effort, EPA studied the pharmaceutical industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of manufacturing facilities, water use, wastewater constituents, or other factors required the development of separate effluent limitations and standards of performance for different segments of the industry. This study required the identification of raw waste and treated effluent characteristics, including: (1) The sources and volume of water used; (2) the manufacturing processes employed; (3) the sources of pollutants and wastewater within the plant; and (4) the constituents of wastewaters, including toxic pollutants.

(See INDUSTRY SUBCATEGORIZATION). After tentatively designating subcategories, EPA then identified the constituents of wastewaters which should be considered for effluent limitations and standards. The pharmaceutical data base was analyzed using standard statistical procedures to help identify the pollutants of concern. This analysis is discussed in more detail in Section V of the proposed development document.

Next, EPA identified several distinct control and treatment technologies, including both in-plant and end-of-pipe technologies, which are in use or capable of being used to control or treat pharmaceutical industry wastewater. The Agency compiled an analyzed historical and newly-acquired data on the effluent quality resulting from the application of these technologies. The long-term performance, operational limitations, and reliability of each of the treatment and control technologies were also identified. In addition, EPA considered the non-water quality environmental impacts of these technologies, including effects on air quality, solid waste generation, and energy requirements.

The Agency then estimated the costs of each control and treatment technology on a plant-by-plant basis. These costs were found to be a function of process flow, raw waste loads, and the effluent levels to be attained. The Agency then evaluated the economic impacts of the costs. Costs and economic impacts are discussed in the section of this notice entitled **COSTS AND ECONOMIC IMPACTS**.

Upon consideration of these factors, as more fully described below, EPA identified various control and treatment technologies as BPT, BAT, BCT, NSPS, PSES, and PSNS. The proposed regulations, however, do not require the installation of any particular technology. Rather, they require achievement of effluent limitations representative of the proper application of these technologies or equivalent technologies. A pharmaceutical plant's existing controls should be fully evaluated, and existing treatment systems fully optimized before commitment to any new or additional end-of-pipe treatment technology.

IV. Data Gathering Efforts

The data gathering efforts involved several distinct, detailed activities which are summarized here. All aspects of the program are described in detail in Section II of the proposed development document and Section 4 of the Economic Impact Analysis.

EPA used four basic approaches to acquire data to support new regulations for the pharmaceutical industry. These approaches included:

- (1) A review of the administrative record for the proposal and promulgation of prior EPA regulations;
- (2) Surveys of the industry;
- (3) Contact with representatives at State regulatory agencies, EPA regional offices and EPA and private research facilities; and
- (4) Open literatures searches.

The administrative records relating to previous EPA regulations included the original Development Document (EPA-441/1-75/060, December 1976) and its appendices. This record was very useful in obtaining general information on the pharmaceutical manufacturing industry. We reviewed this document for information on use or suspected presence of toxic and non-conventional pollutants, applicable production process controls, and available effluent treatment techniques. The administrative record also included the original economic impact analysis documents.

A Specifics of Technical Study.

An industry survey program was developed to collect technical information on the manufacturing of pharmaceutical products. This information was acquired from the industry under Section 308 of the Clean Water Act. Through the survey program the Agency sought information on age and size of facilities, raw material usage, priority pollutant use and occurrences, production processes employed, wastewater characteristics and methods of wastewater control and treatment.

EPA sent 308 portfolios initially to 442 Pharmaceutical Manufacturers Association (PMA) member firms and non-member firms included in the previous EPA guidelines study. 431 responses were returned. Of these, 105 were from nonpharmaceutical/nonmanufacturing plants, while another 50 were duplicate responses. Also, for the purpose of this study, EPA decided to exclude plants exclusively engaged in pharmaceutical research (Subcategory E) for reasons that will be discussed in the section of this notice dealing with excluded subcategories. Therefore, the 32 plants that had only Subcategory E operations were excluded from the survey and the new limitations proposed in this rulemaking do not relate directly to them. Thus, a total of 244 pharmaceutical manufacturing plants are presently included in the original 308 data base.

Through an open literature file developed by The Research Corporation of New England (TRC), EPA subsequently identified a total of 990 possible pharmaceutical sites in the United States. The Agency reviewed this file and produced a revised list containing 540 plant sites of approximately 400 companies which were not included in the original 308 Portfolio distribution, but which were possible producers of pharmaceutically active ingredients.

EPA then sent a Supplemental 308 Portfolio to these additional sites in an effort to define the entire pharmaceutical population, to obtain a more complete profile of the industry, and to confirm that the PMA member firms included in the initial survey are representative of the industry. EPA received 355 survey responses, of which 128 were from nonpharmaceutical/nonmanufacturing plants, 4 were duplicate responses, and 3 were from Subcategory E only plants, leaving 220 pharmaceutical manufacturing plants. After reviewing these questionnaires, EPA determined that it had a comprehensive pharmaceutical industry data base containing 464 manufacturing plants.

In addition to the portfolio program, information was acquired through an open literature search. Some of the important literature sources were: documents prepared by the PMA; the *Executive Directory of U.S. Pharmaceutical Industry*, Third Edition, Chemical Economics Services, Princeton, New Jersey; and the *Directory of Chemical Producers—U.S.A., Medicinals*, Stanford Research Institute, Menlo Park, California. Finally, data were acquired from EPA regional offices, state and other government regulatory offices, EPA and private research facilities, and pharmaceutical plant visits.

B. Specifics of Economic Study

Most of the information used in the economic impact analysis was collected from publicly available sources. Additional information was provided by the Technical Contractor and from the technical 308 Survey. The Technical Contractor provided estimated treatment costs for each plant under each regulatory option analyzed. The economic data can be grouped into three major types: plant-specific data, company data, and industry-wide data.

1. *Plant-Specific Data.* Employment for each plant was provided by the 308 Survey. Sales for most plants were provided by Economic Information Systems, Inc. (EIS). For the few plants

which belong to single establishment firms and were not covered by EIS, plant sales were provided by Dun and Bradstreet. Sales for the remaining plants not covered by EIS were estimated on the basis of employment. To do this, a regression relating sales to employment was estimated for those plants included in the EIS set, and this relationship was used to assign costs to the remaining plants.

Information on the products produced at each plant came from a variety of sources. The 308 Survey provided product information for some plants. Another major source of product information was the 1979 *Directory of Chemical Producers*, SRI International. In a few cases, this was supplemented by information found in two earlier studies by PEDCo Environmental. Dun and Bradstreet and state manufacturing guides provided product information in some cases. For a very few plants, product information was verified by telephone calls to the plants.

2. *Company Data.* The major sources of company-level financial data were annual reports and/or 10-K reports. This information was supplemented by data from Dun and Bradstreet and from various state manufacturing and industrial guides. The International Trade Commission provided some information on which firms produced what products. Additional information was collected from the *Physician's Desk Reference*, the *Merick Index*, and various trade publications and market studies.

3. *Industry-Wide Data.* General information concerning the industry, its history and its growth prospects were collected from various academic studies of the industry, and the trade publications and market studies mentioned above. An additional source of industry information was the U.S. Census of Manufactures, SIC groups 2831, 2833 and 2834.

V. Sampling and Analytical Program

A. Background

EPA focused its sampling and analysis on the toxic pollutants designated in the Clean Water Act. However, we also sampled and analyzed conventional and nonconventional pollutants. We have explained our analysis methods for toxic organic pollutants in the preamble to the proposed regulation for the Leather Tanning Point Source Category (44 FR 38749, July 2, 1979). Before proceeding to analyze industrial wastes, we had to isolate specific toxic pollutants for analysis. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants;

analyses for all of them would overwhelm private and government laboratory resources. To make the task more manageable, therefore, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for choosing these pollutants included the frequency of their occurrence in water, their chemical stability and structure, the amount of the chemical produced, and the availability of chemical standards for measurement.

B. Sampling and Analysis of Industry Wastewater

EPA ascertained the presence and magnitude of the 129 specific toxic pollutants in pharmaceutical manufacturing wastewaters by conducting a two-phase sampling and analysis program: screening and verification. Twenty-six plants were selected for the screening program that are representative of pharmaceutical manufacturing processes based on the use of priority pollutants in production, wastewater characteristics, and current treatment technology in use. The sampling procedures developed by EPA served as the basis for the collection and analysis of screening samples at the chosen pharmaceutical manufacturing sites. These procedures are discussed in "Sampling and Analysis Procedures for Screening of Industrial Effluent for Priority Pollutants," April, 1977.

The purpose of the screening program was to identify the presence and typical levels of priority and other pollutants in the wastewaters of the pharmaceutical manufacturing industry. With this in mind, two sampling locations were of specific interest, the influent and the effluent of the plants' wastewater treatment systems. Sampling the influent to the treatment system (or effluent from the production steps) was necessary to determine the levels of priority and other pollutants generated by the various pharmaceutical manufacturing operations. The effluent from the treatment system was sampled to determine the effect that these various systems have on the removal of priority and other pollutants and the resultant levels reaching the receiving waters.

In addition to sampling the influent and effluent, samples were usually collected at other locations within each facility. This was done to obtain information on a specific operation or treatment step or to ensure that certain characteristics, unique to a certain plant, were adequately covered. Some examples of these sample locations are intake water, specific production wastewaters, holding tanks, and cooling water. As a result, more detailed

information on levels of priority and other pollutants for each screening plant was obtained.

The EPA then selected five of the screening plants for the verification program. The purpose of this program was to confirm the data obtained during the screening program and to determine the concentrations, loadings, and percent reduction of those pollutants found at significant levels during the screening program. Plants selected for inclusion in this program met one or more of the following criteria: Biological treatment was in-place, cyanide was used as a raw material, and/or plants had in-place control technologies such as steam stripping, cyanide destruction, and solvent recovery. In addition, plants were selected that covered the four BPT subcategories.

The analytical results of the screening samples were usually discussed with plant operating personnel in an effort to determine the reasons for the presence of priority pollutants in their wastewater. These results were used to select the verification sampling locations and to define the priority pollutant verification analyses to be performed. Both the sampling locations and the pollutant analyses were the same as those used in the screening program.

Prior to verification sampling, preliminary grab samples were collected from the verification sampling locations to determine the applicability of the planned analytical methods. The data obtained from these grab samples was not used to quantify effluent levels or to calculate percent removals achieved by the treatment systems.

The sampling protocols for both programs are discussed in detail in Section II of the Development Document. All toxic pollutants were analyzed by EPA (304)(h) approved methods. Conventional pollutants (BOD5 and TSS) and non-conventional pollutants were analyzed using "Methods for Chemical Analysis of Water and Wastes" (EPA 62216-74-003) and amendments.

VI. Industry Subcategorization

In developing these regulations, EPA had to determine whether different effluent limitations and standards of performance were appropriate for different groups of plants (subcategories) within the industry. The factors considered in identifying such subcategories included: raw materials used, products, manufacturing processes employed, size and age of manufacturing facility and equipment, waste characteristics, water pollution

control technology, treatment costs, energy requirements, and solid waste generation and disposal requirements. EPA also accounted for similarity of financial characteristics in its economic analysis.

This industry was first subcategorized during the development of the original BPT guidelines. These subcategories were published in the *Federal Register* (November 17, 1976 41 FR 50676).

Under those regulations, EPA grouped the pharmaceutical industry into five product or activity areas based on distinct differences in manufacturing processes, raw materials, products, wastewater characteristics, and treatability. The subcategories were defined as follows:

Subcategory A—Fermentation Products

Subcategory B—Biological and Natural Extraction Products

Subcategory C—Chemical Synthesis Products

Subcategory D—Formulation Products

Subcategory E—Pharmaceutical Research

Fermentation is the basic method used for production of most antibiotics and steroids. It is accomplished by preparing a seed, allowing the seed to ferment a batch of raw materials, and then recovering the desirable product by solvent extraction, precipitation, or ion exchange.

Biological and natural extraction involves the removal of pharmaceutical products from natural sources such as plant roots and leaves, animal glands, or parasitic fungi.

Chemical synthesis is used in the production of most drugs today. They are prepared in batch reactors which can be used for many processes including heating, chilling, mixing, condensation, vacuum evaporation, crystallization, and solvent extraction. These reaction vessels are often constructed of stainless or glass-lined steel for corrosion resistance. This type of construction with the appropriate auxiliary equipment enables these vessels to be used for multiple functions. Since these reactors are very versatile, many different compounds can be produced in any one vessel.

Formulation is the process by which pharmaceuticals are prepared into forms useable for consumers. These forms include tablets, capsules, liquids, and ointments. The active ingredients are mixed with filler, formed into a useable state (dosage quantities), and packaged for distribution.

Pharmaceutical research covers research in any of the active ingredients areas.

During this rulemaking, EPA reevaluated the previous subcategorization of the industry in light of newly acquired information. This was done to confirm the conclusions of the previous study and to examine the possibility of further subdividing or combining the existing subcategories. After reviewing the data for the original subcategories, EPA decided that no additional subcategories were needed and, in fact, that there was no need to distinguish among the original subcategories.

This decision was made after consideration of the following points: (1) Most of the industry that will be subject to these regulations is composed of plants containing more than one process subcategory and the wastewater from all the process subcategories is routinely combined before it is treated for conventional and nonconventional pollutants. In addition, the relative volumes of wastewater from the various subcategory operations are subject to considerable variation. Thus wastewater in most plants is not normally distinguishable by process subcategory. Under these circumstances, therefore, it is difficult to apply different limitations to different subcategories. (2) The product/process diversity within each subcategory tends to obscure the distinctions between subcategories. Thus, in some cases, differences in pollutant loadings for plants within a subcategory may be greater than for plants from different subcategories. Subcategorization schemes along different product/process lines were considered but were rejected as being too complex and not necessarily more accurate. (3) The treatability of the wastewater from plants within each subcategory is not characteristically related to the product/processes engaged in by each manufacturing subcategory. The conventional pollutant loadings for BOD₅ and TSS are generally amenable to reduction by biological treatment, regardless of their subcategory source. It has also been demonstrated that reduction to identical pollutant levels is achievable for wastewater from each of the different subcategories. Pollutant loadings may vary within each subcategory and across subcategories but such differences may be addressed by design and operating modifications to the biological systems. This conclusion is evidenced by the fact that the current BPT regulation establishes identical limitations for each subcategory covered. The costs of treatment are a function of flow, raw waste load and effluent level to be achieved and not process per se. (4) The existing

subcategorization scheme is irrelevant to the regulation of toxic pollutants for this industry. The occurrence of toxic pollutants in a plant's wastewater is not dependent on its process subcategory designation(s) but on the particular mix of individual product-processes it engages in. (5) The available performance data from which the regulations are derived as well as the screening and verification program results for toxic pollutants suggest that the industry can be equitably regulated by a single set of limits. Therefore, the Agency has decided that for the purpose of this rulemaking one set of limitations and guidelines will be proposed for the entire industry (excluding research only facilities, as discussed above).

VII. Available Wastewater Control and Treatment Technology

A. Status of In-place Technology

Current treatment practices in the pharmaceutical industry include both in-plant and end-of-pipe pollution control technologies. Approximately 72% of direct discharges have some type of end-of-pipe treatment system in-place. Another 17% of direct dischargers utilize in-plant technology while 10% of direct dischargers have both end-of-pipe and in-plant control technologies in-place.

The majority of those using end-of-pipe systems employ equalization and neutralization followed directly by biological treatment. In addition, some facilities use primary treatment, physical-chemical treatment and other methods (e.g., polishing ponds and filtration). These systems and their components are described in Section VII of the proposed development document.

The majority of plants which utilize in-plant controls rely on solvent recovery. In addition, some plants use cyanide destruction, chromium reduction and metals precipitation, steam stripping and other allied treatment techniques. Solvent recovery techniques are widely practiced in the industry because of the economic value of reusing solvents. Some plants, in order to make reuse possible, try to use a small number of different solvents. When recovered solvent mixtures are too complex to be separated and reused, they are disposed of by incineration, landfilling, deep well injection and contract hauling. Wastewater that contains significant amounts of volatile organic solvents may be treated by steam stripping. Preliminary studies indicate that steam strippers in use by the industry may reduce to a concentration level of 50 µg/l such commonly used solvents as benzene,

1,2-dichloroethane, chloroform, ethylbenzene, methylene chloride and toluene and achieve a 55% reduction in the concentration of phenol. Cyanide is destroyed by using chemical oxidation (alkaline chlorination or ozonation) and thermal/pressure techniques. Cyanide destruction systems in the pharmaceutical industry can achieve a long term average effluent concentration of 200 µg/l total cyanide. This performance is confirmed by the results of similar studies in the metal finishing industry. Metals are treated by chromium reduction and either hydroxide or sulfide precipitation with concentration levels ranging from 100 to 500 µg/l being achieved for various toxic metals.

Many new pharmaceutical plants are being built with in-plant source controls, which may reduce the need for additional controls further downstream. Examples of in-plant source controls include modification of production processes, separation of wastes as they are produced, use of automatic pollutant detection equipment within the process, chemical or solvent substitution, material reclamation, and water reduction or recycle. Pharmaceutical manufacturers, however, cannot practice substitution of solvents or use of recovered chemicals as easily as other chemical manufacturers. FDA requirements specify that any recycled chemicals or solvents must meet the same specifications as virgin chemicals or solvents to be used in an FDA approved drug (active ingredient) manufacturing process. The substitution of a different solvent or chemical in an FDA approved manufacturing process may reopen the approval process for the drug involved. If contaminants are present in the recycled solvents, the manufacturer must prove to FDA that no deleterious effects result in the active ingredient and final product. Pharmaceutical manufacturing plants also are required by FDA to track by lot number all chemicals used in each process.

B. Control Treatment Options

We considered the following control treatment options:

Option 1—In-plant cyanide destruction.

Option 2—Option 1 plus existing BPT (equalization, biological treatment and clarification).

Option 3—The treatment achieved by the well-operated biological wastewater treatment facilities currently in use by direct dischargers in the pharmaceutical industry. The treatment performance achieved by these facilities is significantly better than that required by

the existing BPT regulation because of better operation and greater design capacity.

Option 4—Option 1 plus Option 3.

Option 5—Option 3 plus additional biological treatment (activated sludge, rotating biological contactors (RBCs), or polishing ponds). Design studies indicate that this technology option would achieve the lowest effluent levels of conventional pollutants of all options considered.

Option 6—Option 1 plus the treatment achieved by the best of the well-operated biological wastewater treatment facilities (see option 3) use by the pharmaceutical industry.

Option 7—Option 1 plus steam stripping.

Option 8—Option 1 plus Option 5.

Detailed information on these technologies is presented in Sections VII and VIII of the proposed development document.

VIII. General Criteria and Selection of Treatment Options and Standards for Limitations

The treatment options selected as the basis of effluent limitations and pretreatment standards are based on the criteria specified in the Clean Water Act. Each of the technology options is discussed in more detail in the proposed development document.

BPT Effluent Limitations

The factors considered in defining best practicable control technology currently available (BPT) include: (1) The total cost of applying the technology relative to the effluent reductions that result, (2) the age of equipment and facilities involved, (3) the processes used, (4) engineering aspects of the control technology, (5) process changes, (6) non-water quality environmental impacts (including energy requirements), (7) and other factors, as the Administrator considers appropriate. In general, the BPT level represents the average of the best existing performances of plants within the industry of various ages, sizes, processes, or other common characteristics. BPT focuses on end-of-process treatment rather than process changes or internal controls, except when these technologies are common industry practice.

The cost/benefit inquiry for BPT is a limited balancing, committed to EPA's discretion, which does not require the Agency to quantify benefits in monetary terms. See e.g., *American Iron and Steel Institute v. EPA*, 526 F.2d 1027 (3rd Cir. 1975). In balancing costs against the benefits of effluent reduction EPA considers the volume and nature of

existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required level of pollutant control. The Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors. See *Weyerhaeuser Company v. Costle*, 590 F.2d 1011 (D.C. Cir. 1978).

In 1976 EPA promulgated BPT for the pharmaceutical industry based on biological treatment. These regulations are discussed in the section dealing with prior regulations.

EPA is proposing to revise the existing TSS limitations currently applicable only to subcategories B, D, and E and to extend these revised TSS limitations to the entire industry. The existing TSS limitations were derived from a very small data base. Subsequently the Agency obtained long term operating data (1978 and 1979) on BOD₅, COD, and TSS levels at 21 pharmaceutical plants with biological treatment systems in-place. This data clearly showed that the 52 mg/l TSS limit was far too stringent and inconsistent relative to the percent reduction BOD₅ and COD limits achieved by the application of biological treatment technology. This data base also provided removal information for that portion of the industry for which TSS limits were not established in 1976. The Agency has therefore decided to amend the existing BPT regulation by replacing the current TSS monthly average limits with TSS limits consistent with the 90% reduction in BOD₅ loadings and the 74% reduction in COD loadings required by the existing regulation. The new proposed TSS limitation is based on the average performance of those direct dischargers employing BPT technology equalization, biological treatment, and clarification. This revised TSS limitation of 217 mg/l will apply to all plants regardless of their subcategory designation since the new data indicates that this limitation can be met through the application of biological treatment by plants in all the existing subcategories. The available data did not permit the derivation of daily maximum TSS limitations. Consequently, only a 30-day maximum average limitation will be proposed to replace the existing limitation.

In addition, EPA is proposing to revise the current BPT limitations for BOD₅ and COD to allow dischargers the option of meeting the current limitations based on a percent reduction calculation

or in the alternative, to meet specific concentration-based limitations. The new BPT concentration-based limitation for BOD₅ would be equal to the proposed BCT limitation for BOD₅. The new BPT concentration based limitation for COD would be equal to the proposed BAT limitation for COD. This revision was necessitated by the agency's decision not to change the existing percent reduction-based BPT limitations although the new BCT and BAT limitations are concentration-based. This change results in the anomaly at some plants of BCT and BAT limitations being less stringent than the percent reduction-based BPT limitations. To allow dischargers to select the least stringent limitation, the Agency has proposed to revise the current BPT limitations. This decision is consistent with the Agency's decision to propose BCT and BAT concentration-based limitations in order to correct inequities to low raw waste dischargers resulting from the current percent reduction-based BPT limitations. The Agency is not changing the current percent reduction BPT limitations, it is merely providing optional BPT limitations. We are also proposing the addition of a cyanide limitation. The cyanide limitation is based on the performance of the best existing in-plant cyanide destruction systems in use by the industry (option 1). High concentration cyanide streams are effectively reduced using cyanide destruction methods such as alkaline chlorination, ozonation and alkaline pyrolysis. These methods, which are described in Section VII of the proposed development document, are currently in use within the industry and are, in many cases, a necessary pretreatment step prior to biological treatment. Limitations based on the performance of the alkaline pyrolysis procedure are being proposed for inclusion in the existing BPT regulation.

EPA estimates that the wastewater discharge of cyanide by direct dischargers in the pharmaceutical industry will be reduced by 17,000 pounds per year as a result of these limitations. The costs and economic impacts of the cyanide limitations (as discussed in Section XI of this notice) are estimated to be small in comparison to the benefit to be achieved. No effluent reduction benefits or costs are attributable to the revised TSS limitation because it is less stringent than the existing TSS regulation for three plant subcategories (B, D, and E) and the costs incurred and benefits achieved by newly regulated A and C plants are directly attributable to meeting the current BPT BOD₅ and COD

limitations. Similarly, no costs or benefits are attributable to the alternative concentration-based limitations for BOD₅ and COD, since these limitations are less stringent than the existing percent reduction-based limitations for the sources to which they might apply. Therefore, the Agency considers these limitations appropriate for BPT.

B. BCT Effluent Limitations

The 1977 amendments added Section 301(b)(2)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4)—BOD, TSS, fecal coliform and pH—and any additional pollutants defined by the Administrator as conventional. On July 30, 1978, EPA designated oil and grease as a conventional pollutant (44 FR 44501).

BCT is not an additional limitation; rather it replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F. 2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA initially published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Courts of Appeal ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required). The Agency has just proposed a new BCT cost test methodology in response to these requirements by the court (47 FR 49176, October 29, 1982). The reader is referred to that notice for a detailed discussion of the Agency's proposed new BCT methodology.

As discussed in the preamble to the BCT proposal, a candidate BCT option would pass the first BCT test if the costs in going from BPT to BCT were less than the \$.42/lb. (1980 dollars) a POTW would incur in going from secondary treatment to advanced secondary treatment. A candidate BCT option

would pass the second test if the cost per pound in upgrading from BPT to BCT were less than 1.43 times the cost per pound in upgrading from Pre-BPT treatment levels to BPT. If the candidate BCT technology does not pass both tests, BCT is established to equal BPT.

Using available data EPA applied the first BCT cost test to candidate option 3 and the cost per pound was \$.38 (1980 dollars). EPA then applied the second test to this candidate option and the result was 0.81 which is less than the 1.43 factor cited above. Therefore, candidate option 3 passed both parts of the BCT cost test and BCT limitations more stringent than existing BPT limitations are appropriate.

The test was applied to all direct dischargers and the results have been stated for this group as a whole, since the Agency is not using subcategories for purpose of BCT regulation.

EPA is proposing limits achievable by well-operated biological treatment facilities currently in use by direct dischargers in the pharmaceutical industry (option 3). These facilities perform significantly better, with respect to effluent BOD₅ and TSS, than the average of the existing BPT treatment facilities. This superior treatment may be achieved by increasing the capacity of existing biological treatment units (equalization tanks, activated sludge reactors and clarifiers) or by adding such treatment stages to the existing system. Add-on activated sludge technology forms the cost basis for BCT. We have calculated the proposed BCT BOD₅ limitations based on concentration, rather than on percent removal as in the BPT regulation. The percent removal approach tends to favor a few manufacturers with large waste load, at the expense of the many who have moderate or small waste loads and, because of economies of scale, less ability to pay for treatment. The concentration-based approach, which is being used for related industries, avoids this problem. The data currently available does not indicate that this change will create technical problems for high wasteload plants which originally installed systems designed to meet the percent reduction BPT limits. We applied the additional costs which might be incurred due to the change to concentration-based limitations. We found that the proposed BCT limitations pass both cost tests. We also considered the level of treatment described under option 5 as the basis of BCT effluent limitations. However, option 5 does not pass the BCT cost tests.

EPA estimates that BCT limitations based on option 3 will reduce the

discharge of conventional pollutants (BOD5 and TSS) by direct dischargers in the pharmaceutical industry by 3,990,000 pounds per year.

We also evaluated the costs and economic impacts of these BCT limitations (a fuller discussion of them is found in Section XI of this notice) and concluded that these limitations are appropriate.

C. BAT Effluent Limitations

In assessing best available technology economically achievable (BAT), EPA considers factors such as the age of equipment and facilities involved, the process employed, process changes, non-water quality environmental impacts (including energy requirements), and the costs of application of such technology (Section 304(b) (2)(B)). At a minimum, the BAT represents the best existing economically achievable technology of plants of various ages, sizes, processes, or other shared characteristics. The Agency may transfer BAT from a different subcategory or industrial category when existing performance is determined to be uniformly inadequate. In addition, BAT may include process changes or internal controls, even when not common industry practice.

The statutory assessment of BAT considers costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser v. Costle*, 11 ERC 2149 (D.C. Cir. 1978)). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges expected after application of BAT, and the costs and economic impacts of the required pollution control levels.

Despite this consideration of costs, the primary determinant of BAT is effluent reduction capability using economically achievable technology. As a result of the Clean Water Act of 1977, achieving BAT has become the principal national means of controlling toxic water pollution.

For BAT, EPA chose option 4, which equals BCT plus cyanide destruction. Long term performance data from the pharmaceutical industry indicate that the BCT technology also controls COD. The proposed COD limitation represents the best economically achievable performance of plants of various ages, sizes, processes and other shared characteristics. EPA also considered options 6 and 8 for the control of COD. After consideration of the statutory factors, particularly processes employed, the Agency concluded that these options would require a level of

treatment for COD which is not economically achievable for existing direct dischargers. The Agency is also proposing BAT cyanide limitations equivalent to BPT limitations. The available data on cyanide control was evaluated in terms of the cyanide generating processes and the performance of available treatment technology employed by direct discharging pharmaceutical plants and EPA concluded that more stringent control of cyanide beyond BPT would not be economically achievable.

EPA estimates that BAT COD limitations will prevent the discharge of about 4,460,000 pounds per year of COD. No reduction in the discharge of cyanide is expected as a result of the BAT cyanide limitations. No costs or economic impacts are expected as a result of those limitations.

The Agency also considered possible technologies directed at toxics, including metals precipitation (with chromium reduction as needed) and steam stripping. However, as explained in the Development Document, EPA concluded that industry-wide effluent limitations were not required for metals or other toxics because they were either found only at a few plants at treatable levels, found only in trace amounts, or were adequately treated by biological systems. In addition, some further reduction from current levels of such pollutants as phenols, benzene, chloroform, ethyl benzene, methylene chloride and toluene will incidentally be achieved when BCT and BAT limitations are attained. For these reasons, and because of their costs, we decided not to include them as a basis for the BAT regulation.

D. New Source Performance Standards

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient pharmaceutical manufacturing processes and wastewater treatment technologies; Congress, therefore, directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

As a result, limitations for new source performance standards (NSPS) should represent the most stringent numerical values attainable through demonstrated control technology for all pollutants (conventional, nonconventional, and toxics).

For NSPS, EPA picked option 6 for the control of BOD5 TSS, COD and cyanide.

The proposed limits for BOD5 TSS and COD are based on the performance of the best of the well-operated biological wastewater treatment facilities currently in use by the pharmaceutical industry. This treatment is based on expanded biological treatment systems including activated sludge capacity in excess of that considered in option 4. The data indicate that this is the best available demonstrated technology, as required by section 306. We considered option 8 but concluded that this treatment option is insufficiently demonstrated among direct dischargers in the industry to warrant its selection. A separate treatment for solvents was unnecessary because this option selected resulted in incidental removal of solvents from wastewater. The NSPS cyanide limitation is equivalent to the BPT and BAT limitations because the evidence does not demonstrate that greater reduction of cyanide can be achieved by new pharmaceutical sources than at existing sources.

The Agency estimates that the average new source direct discharger will reduce its discharge of BOD5 TSS, and COD by 30,000, 15,000 and 83,000 pounds per year, respectively, beyond that required by the existing source BCT and BAT limitations. No incremental reduction of cyanide will be required of new source direct dischargers. We also estimate that the average new source will incur annual costs 38 percent above those estimated for the average existing source. (A fuller discussion of new source costs and impacts is found in Section XI of this notice). EPA concludes that new sources standards for direct dischargers based on option 6 are appropriate in view of these considerations.

E. Pretreatment Standards for Existing Sources

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES) which must be achieved within three years of promulgation or such earlier date specified by EPA. PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403) serve as the framework for these proposed pretreatment regulations for the pharmaceutical industry. EPA has generally determined that there is pass

through of pollutants if the percent of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removal by the BAT model treatment system. Using this interpretation EPA has determined that pass through of cyanide and volatile toxic organics (toxic solvents) does occur in the pharmaceutical industry.

EPA has selected in-plant cyanide destruction (option 1) as the basis for PSES standards. Unless cyanide discharges from indirect dischargers in the pharmaceutical industry are controlled, they may cause pass-through problems at POTWs. The selected technology is the same discussed above for BPT, BAT and NSPS. This treatment will result in low effluent levels of cyanide being discharged to POTWs at an annualized cost of \$379,000 (1982 dollars) with no significant economic impacts (see Section XI for a fuller discussion of costs and impacts). The Agency also considered proposing pretreatment standards for toxic volatile organics, because in some instances they pass through municipal treatment works. Steam stripping (option 7) may be an appropriate technology in this regard. However, the available data do not enable us to confirm our estimate of the levels of total toxic volatile organics (TTVO) which steam stripping can achieve in this industry (1.2 mg/l). Therefore, this proposal does not include a specific TTVO standard although we are considering adopting such a standard as part of the final rule if we have adequate supporting data. EPA estimates that if a 1.2 mg/l standard were achieved, 19.5 million pounds per year of toxic volatile organics now discharged to POTWs will be removed prior to introduction to municipal sewers. We specifically solicit data on this issue. Section XII of this preamble presents the results of a preliminary economic impact analysis of option 7 (cyanide destruction plus steam stripping) based on our current estimate of steam stripping performance.

The Agency estimates that pretreatment standards controlling the discharge of cyanide by indirect dischargers in the pharmaceutical industry will prevent the discharge of 5900 pounds per year of cyanide to municipal treatment works. EPA has evaluated the costs and economic impacts of these standards (a fuller discussion of which is found in Section XI of this notice) and concluded that these standards are appropriate. The compliance date for these standards proposed to be July, 1984.

F. Pretreatment Standards for New Sources

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant control measures, and end-of-pipe treatment, and to use plant site selection to ensure adequate treatment system installation.

The Agency has selected option 1 as the basis for PSNS standards. This option is also part of the technology basis for the BPT, BAT, PSES and NSPS limitations and standards. The justification for this option selection for new source indirect dischargers is identical to that used for the inclusion of this option as part of the NSPS technology base, namely that it has not been demonstrated that new sources can achieve a more stringent control of cyanide than existing sources. EPA also considered option 7 for PSNS but concluded that it was inappropriate at this time for the reason stated in the PSES subsection. No incremental costs, impacts or benefits are attributable to PSNS cyanide standards since these standards are the same as PSES.

IX. Regulated Pollutants

The basis on which the controlled pollutants were selected is detailed in Section VI of the proposed development document. Information also is provided in that section on their general nature, common industrial use, pharmaceutical industry use, detection frequency, and concentration levels.

A. BPT

The pollutants that would be controlled through implementation of the revision to the BPT regulation for this category are the conventional pollutant TSS and the toxic pollutant cyanide. The TSS limitations replace the existing limitations and will apply to all plants covered in the existing BPT regulation (subcategory E only plants included). The cyanide limitations are new and will apply to all plants covered in the existing BPT regulation except plants which are subcategory E only plants. Cyanide is to be controlled by "maximum mg/l for one day" and "average mg/l for 30 consecutive days" effluent limitations. TSS is to be controlled by "average mg/l for 30 consecutive days" effluent limitations. (Existing BPT limitations for BOD₅, COD and pH are unchanged.) BOD₅ and COD are to be controlled by "average mg/l

for 30 consecutive days" effluent limitations.

B. BAT

The pollutants that would be controlled through implementation of this regulation for the pharmaceutical industry are the nonconventional parameter COD and the toxic pollutant cyanide.

Discharges of COD and cyanide are controlled by "maximum mg/l for one day" and "average mg/l for 30 consecutive days" effluent limitations, both expressed in mg/l. Toxic metal and organic pollutants may be regulated on a case-by-case basis if necessary.

C. BCT

The pollutants controlled by BCT regulation for this category include the conventional pollutants BOD₅ and TSS. Both are to be controlled by "maximum mg/l for one day" and "average mg/l for 30 consecutive days" effluent limitations. The pollutant parameter pH is again specified as a range of 8.0 to 9.0.

D. NSPS

This regulation will cover the conventional pollutants, BOD₅ and TSS, the nonconventional parameter COD, and the priority pollutant cyanide. All pollutants will be controlled by "maximum for one day" and "average mg/l for 30 consecutive days" effluent limitations. The pollutant parameter pH is specified again as a range of 8.0 to 9.0.

E. PSES and PSNS

The pollutant controlled by PSES and PSNS regulations is cyanide. Cyanide is to be controlled by "average mg/l for 30 consecutive days" and "maximum mg/l for one day" effluent standards.

X. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been rewritten in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979.

A. Pollutants Excluded

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detected by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and, therefore excluded from regulation are listed in Appendices B and D to this notice.

Paragraph 8(a) (iii) also allows exclusion of pollutants that are: (1) Detected in the effluent from a small number of sources and uniquely related to those sources; (2) detected in only trace amounts not likely to cause toxic effects; or (3) sufficiently controlled by existing regulations. Thirty-four different toxic pollutants were found in the effluent of direct discharger pharmaceutical plants during the screening and verification program. Twenty-five of these pollutants (toxic metals and volatile organics) were found at treatable levels only in a small number of instances. In the instances where such pollutants were found at treatable levels, these observations were attributable to manufacturing activities that are uniquely related to the plants sampled. Another eight toxic pollutants (some phenols and phthalates) were found at or below the treatability limit concentrations established for existing physical chemical treatment methods by studies conducted on wastewater from several industry categories. The 33 pollutants are listed in Appendix C to this notice along with the particular reason(s) for excluding them from regulation. (The 34th toxic pollutant detected, cyanide, is being regulated).

Paragraph 8(b)(ii) of the Settlement Agreement authorizes the Administrator to exclude from regulation under the pretreatment standards a subcategory or category if the toxicity and amount of incompatible pollutants (taken together) introduced by such point sources into the POTW is so insignificant as not to justify developing a national pretreatment regulation. EPA has reviewed the S/V data from indirect dischargers and has identified those toxic pollutants which qualify for exclusion from regulation under pretreatment standards. Appendix D lists those toxic pollutants not detected in the effluents of indirect dischargers. Appendix E lists those toxic pollutants that were found only infrequently and at low concentrations. Therefore, EPA is excluding the Pharmaceutical Category from regulation under pretreatment standards for the 108 toxic pollutants listed in Appendices D and E.

B. Subcategories Excluded

The Settlement Agreement did not require EPA to regulate the entire Pharmaceutical industry. Subcategory E, Pharmaceutical Research, is not mentioned in the Settlement Agreement nor is it listed under a separate SIC code. Since pharmaceutical research does not involve production and wastewater generation in appreciable quantities on a regular basis, EPA

considers this subcategory outside the province of ordinary industrial guidelines development. Therefore, facilities which conduct pharmaceutical research only are specifically excluded from all limitations and standards in this regulation with the exception of the revised BPT limitation on TSS and the alternative BOD₅ and COD concentration-based limitations. Research activities as conducted at mixed and single subcategory plants (A, B, C and D only) will be covered by this regulation because the wastewaters from these activities were studied as part of the technical development of this regulation. However, these activities contribute a very small portion of wastewater to the final effluent of the average production facility.

XI. Costs and Economic Impacts

A. Cost and Economic Impact

In order to estimate the economic impact of today's proposal, EPA reviewed its incremental effect on the industry. This analysis is presented in *Economic Impact Analysis of Proposed Effluent Limitations and Standards for the Pharmaceutical Industry*. This report details the investment and annual costs for the industry as a whole and for typical plants covered by the proposed regulation. Compliance costs are based on engineering estimates of capital requirements for the effluent control systems described earlier in this preamble. The report assesses the impact of effluent control costs in terms of price changes, plant closures, employment effects, and balance of trade effects. Negligible hazardous waste disposal costs are expected from the proposed regulation.

EPA has identified 464 pharmaceutical direct and indirect discharging facilities that are covered by this regulation. An estimated 125 of these plants are zero dischargers and are not expected to incur costs. Total investment for the remaining 339 plants for BPT/BCT/BAT and PSES is estimated to be \$24.8 million, with annual costs of \$9.6 million, including depreciation and interest. These costs are expressed in 1982 dollars and are based on the determination that plants will upgrade their existing treatment systems to comply with BPT/BCT/BAT or PSES, as appropriate. One possible plant closure and two possible production line closures are projected as a result of compliance costs for this regulation. Possible employment effects are 143 manufacturing employees, or less than 0.2 percent of all pharmaceutical manufacturing employees. The maximum price increase if all costs

were passed on to consumers range is less than 0.17 percent. Balance of trade effects are insignificant.

In order to measure the potential economic impacts, a two-step analytical procedure was employed. First, the analysis determined whether a plant's compliance costs exceeded one percent of sales. If the costs did exceed one percent, then the analysis considered information on the firm's financial position, its size, the relative importance of its pharmaceutical line of business, patent protection, location of plant—whether in the U.S. or Puerto Rico—and other relevant economic information to predict a firm's likely impact if the proposed regulation was promulgated. If the firm was in a position to pass the costs on to the consumer, due to patent protection, for example, then it was assumed that prices would increase and the plant would remain in operation. If costs could not be passed on, then, based on the above information, a determination was made as to whether a plant might close, a production line might shut down, or production might be shifted from one plant to another. For the reasons discussed below and after applying this economic impact methodology, the Administrator has determined that the costs of this regulation are justified.

In addition, EPA has conducted an analysis of the incremental removal cost per pound equivalent for each of the proposed technology-based options. A pound equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The use of "pound equivalent" gives relatively more weight to removal of more toxic pollutants. Thus for a given expenditure, the cost per pound equivalent removed would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. This analysis is included in the record of this rulemaking in a work entitled "Cost Effectiveness Analysis of Proposed Effluent Standards and Limitations for Pharmaceuticals". EPA invites comments on the methodology used in this analysis.

1. **BPT.** BPT regulations are proposed for cyanide and TSS control. An estimated thirteen out of sixty direct discharging plants use cyanide in their manufacturing processes. Six of the thirteen plants reported concentrations below the cyanide limitation and, therefore, will incur no costs from the

proposed BPT regulation. A seventh plant is very complex and any attempt to estimate costs for cyanide treatment was not considered feasible in view of the lack of available data. Investments and annualized costs for the remaining six plants are estimated to be \$2.0 million and \$723 thousand, respectively. As explained earlier in Section VIII of the preamble, no costs and hence no economic impacts are expected as a result of the BPT TSS limitation or the alternative concentration-based limitations for BOD5 and COD. In summary, there are no significant economic impacts projected as a result of BPT.

2. *BCT*. The proposed BCT regulation would control BOD5 and TSS at 113 mg/l and 104 mg/l, respectively. Fourteen of the 60 direct discharging plants will incur investment and annualized costs of \$21.8 and \$8.5 million, respectively. Three of the fourteen plants incurring compliance costs may significantly alter their production as a result of this regulation. One plant employing 45 people may close. Another plant employing 25 people may either close or shift its pharmaceutical production to another facility. A third plant employing 73 people may discontinue its pharmaceutical production line but keep the plant open for other production operations. Pharmaceutical employment at these three facilities totals 143 people, or less than 0.2 percent of all pharmaceutical manufacturing employment.

3. *BAT*. No incremental costs are expected to incur from the BAT limitations because the technology controls that are the basis for the BPT/BCT limitations also serve as a basis for the BAT limitations.

4. *PSES*. Two options were considered for PSES: Cyanide destruction and cyanide destruction plus the removal of total toxic volatile organics. The proposed standard is for the control of cyanide only. An estimated three out of 279 plants will incur total capital and annualized costs of \$1.0 million and \$379 thousand respectively. No significant impacts are expected from the proposed PSES cyanide regulation.

A standard requiring cyanide destruction plus the removal of total toxic volatile organics was also considered. Assuming the installation of steam stripping to achieve a TTVO long term average concentration of 1.2 mg/l, capital and annualized costs for this option totaled \$4.5 million and \$5.8 million, respectively. Approximately 47 plants would incur costs. No plants are expected to close as a result of this option but one plant may curtail its

pharmaceutical production at a large multi-product facility.

5. *NSPS and PSNS*. New source limitations controlling BOD5, TSS, and COD for direct dischargers (NSPS) are more stringent than the limitations for existing sources. Capital and annualized costs for a model new facility are estimated to be less than \$2.2 million and \$0.9 million, respectively. The capital costs are projected to add less than two percent to the capital costs of building a new facility. Therefore, the new source limitations are not expected to discourage entry or result in any significant differential economic impact to new plants. In addition, existing sources making major modifications to their plants are not expected to incur costs greater than new source costs; as a result, the Agency believes the NSPS costs are not significant enough to deter investment in either major modifications to existing plants or investments in new plants.

Regulations for new sources for indirect dischargers (PSNS) are the same as those for existing sources. Therefore, no incremental impacts are expected from implementation of the proposed PSNS.

B. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules impose an annual cost to the economy of \$100 million or more or meet other economic impact criteria. The proposed regulation for pharmaceuticals is not a major rule because its annualized costs of \$9.6 million are less than \$100 million and it meets none of the other criteria specified in paragraph (b) of the Executive Order. This proposed rulemaking satisfies the requirement of the Executive Order for a non-major rule.

C. Regulatory Flexibility Analysis

Public Law 96-354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. The analysis may be conducted in conjunction with or as part of other Agency analyses.

The economic impact analyses for this industry identified only three firms as potentially experiencing significant economic impacts as a result of the proposed regulation. One of the firms employs 70 people, while the other two have employment in excess of 2,000. No significant economic impacts were projected for the remaining 240 firms in the data base.

Since only one of the firms in the data base projected to experience significant economic impact is a small firm, there is no disproportionate burden on small businesses; therefore, a formal Regulatory Flexibility Analysis is not required.

XII. Non-Water Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. This proposal was reviewed by EPA personnel responsible for non-water quality environmental programs. While it is difficult to balance pollution problems against each other and against energy use, EPA believes the proposed regulations best serve often competing national goals.

The non-water quality environmental impacts associated with the proposed regulations are:

A. Solid Waste

Sludges will be generated both by the in-plant and end-of-pipe treatment technologies. Sludge production rates for model plants, in pounds per day of dry solids, are shown for each treatment process in Section VIII the proposed development document. The amount of sludge produced by pharmaceutical plants will vary markedly from site to site. However, the production quantities presented in the proposed development document are conservative estimates and are expected to be equal to or higher than the actual amounts experienced by any given production site. In addition, not all pharmaceutical plants will generate each of the pollutants associated with all treatment technologies.

EPA estimates that about 426,000 pounds per year of additional sludge will be generated by the BCT and BAT limitations, and increase of about 2% over that currently produced under BPT. New source direct dischargers are expected to generate on average of 18 percent more sludge than existing sources as a result of NSPS standards. No sludge will be generated as a result of the Pretreatment Standards. The sludge generated as a result of the existing BPT limitations as well as that to be generated as a result of these regulations is not hazardous and

therefore not subject to RCRA regulated disposal.

B. Air Pollution

Steam strippers, if properly designed and operated, will condense volatile solvents rather than emit them to the atmosphere. Therefore, if PSES and PSNS are adopted for solvents, no significant air pollution effects are expected from the regulation. Moreover, due to the value of the compounds being removed, it will generally be cost effective to recondense and recover these compounds rather than emit them to the atmosphere even where only biological treatment is used. Some volatilization of organics from wastewater treatment aeration basins may give rise to local air pollution, but this is not expected to be significant.

C. Energy Requirements

EPA estimates that the achievement of proposed BPT, BAT, BCT, PSES, and PSNS will together increase electrical energy consumption by approximately 2 to 4 percent of present facility use of all plants.

XIII. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe what have been termed "best management practices" (BMPs) described under AUTHORITY AND BACKGROUND. EPA may develop BMPs which are: (1) Generic in nature and applicable to all industrial sites; (2) specific in nature and applicable to a specified industrial category; and (3) useful to permit authorities in establishing BMPs required by unique circumstances at a given plant. The existing BPT regulation requires that separable mycelia and solvents not be included in the raw waste load calculations for BOD₅ and COD; that is, must be removed prior to treatment. This rulemaking will not change the requirement for this practice. In addition, existing regulations of the Food and Drug Administration as well as competition within the industry require that pharmaceutical plants be carefully operated. Therefore, the Agency does not intend to develop additional BMPs for the Pharmaceutical Industry at this time.

XIV. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons

beyond the reasonable control of the permittee. An upset provision is necessary, it has been argued, because such upsets will inevitably occur due to physical limitations even in properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Company v. EPA*, 564 F.2d 1255 (9th Cir. 1977) with *Weyerhaeuser v. Costle, supra*, and *Corn Refiners Association, et al. v. Costle* F.2d (8th Cir. 1979). See *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which wastewater treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits, and has promulgated NPDES regulations which include upset and bypass permit provisions. [See 44 FR 32854 (June 7, 1979)]. The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. The upset and bypass provisions which are incorporated into NPDES permits will apply to permitted pharmaceutical plants.

XV. Variances and Modifications

Upon promulgation of these regulations, the numerical effluent limitations for the appropriate subcategory must be applied in all Federal and state NPDES permits issued to pharmaceutical industry direct dischargers. In addition, on promulgation, the pretreatment limitations are directly applicable to indirect dischargers.

For the BPT and BCT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. [See *E. I. duPont de Nemours and Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle, supra*]. This variance recognizes factors

concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973-1976 regulations for specific industries, it now will be included in the general NPDES regulations and not in the specific pharmaceutical industry regulations. [See 44 FR 32854, 32950 (June 7, 1979) for the text and explanation of the "fundamentally different factors" variance.] In accordance with this policy, we intend to delete from the revised BPT regulation for the pharmaceutical category the current language on "fundamentally different factor" variances.

The BAT limitations in these regulations also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants are subject to modifications under Section 301(c) and 301(g) of the Act. Under Section 301(1) of the Act, these statutory modifications are not applicable to "toxic" pollutants.

The economic modification section (301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants (Sections 301(1) precludes the Administrator from modifying BAT requirements for any pollutants which are on the toxic pollutant list under section 307(a)(1) of the Act) for dischargers who file a permit application after July 1, 1977, upon a showing that such modified requirements will (1) represent the maximum use of technology within the economic capability of the owner or operator and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification section (301(g) allows the administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish,

and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES program, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for the 301(c) or 301(g) modification or both. Applicants interested in applying for both must do so in their initial application. For further details, see 43 FR 40859, September 13, 1978.

The nonconventional pollutant limited under BAT in this regulation is chemical oxygen demand (COD). No regulations establishing criteria for 301(c) and 301(g) determinations have been proposed or promulgated, but the Agency recently announced in the April 12, 1982 Regulatory Agenda plans to propose such regulations by December, 1982 (47 FR 15702). All dischargers who file an initial application within 270 days will be sent a copy of the substantive requirements for 301(c) and 301(g) determinations once they are promulgated. Modification determinations will be considered at the time the NPDES permit is being reissued. Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR 403.7, 403.13; 43 FR 27736 (June 28, 1978)).

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs. [See 40 CFR 403.7, 403.13; 46 FR 9404 (January 28, 1981)]. Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7

New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. (See *duPont v. Train*, *supra*.)

XVI. Relationship to NPDES Permits

The BAT, BPT, BCT, and NSPS limitations in this regulation will be applied to individual direct discharging pharmaceutical plants through NPDES permits issued by EPA or approved state agencies under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of these regulations on NPDES permits, except that variances and modifications are expressly authorized. This section describes several other aspects of the relationship between these regulations and NPDES permits.

One subject that has received different judicial rulings is the scope of NPDES permit proceeding when effluent limitations and standards do not exist. Under current EPA regulations, states and EPA regions that issue NPDES permits before regulations are promulgated must do so on a case-by-case basis. This regulation provides a technical and legal base for new permits.

Another issue is how the regulations effects the authority of those that issue NPDES permits. EPA has developed the limitations and standards in this regulation to cover the typical facility for this point source category. In specific cases, the NPDES permitting authority may have to establish permit limits on toxic pollutants that are not covered by this regulation. This regulation does not restrict the power of any permit-issuing authority to comply with law or any EPA regulation guideline, or policy. For example, if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutant on a case-by-case basis, when such action conforms with the purposes of the Act. In addition, if state water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permit issuing authority must apply those limitations.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise discretion in a manner that recognizes and promotes good faith compliance efforts.

XVII. Small Business Administration Financial Assistance

The Agency encourages small pharmaceutical manufacturers to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Guaranteed Pollution Control Bond Program, (2) the section 503 Program, and (3) the Regular Guarantee Program. All the SBA loan programs are open only to businesses that have: (a) Net assets less than \$6 million, and (b) an average annual after-tax income of less than \$2 million, and (c) fewer than 250 employees.

The Section 503 Program, as amended in July 1980, allows long-term loans to small- and medium-sized businesses. These loans are made by SBA approved local development companies. For the first time, these companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury. Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and section 503 Programs contact your district or local SBA Office. The coordinator at SBA headquarters is Ms. Frances Desselle who may be reached at (202) 382-5373.

For further information and specifics on the Guaranteed Pollution Control Bond Program contact:

U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235-2902.

XVIII. Summary of Public Participation

During July and August of 1980, the Agency circulated a draft technical contractor's report entitled "Contractor's Engineering Report for the Development of Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Point Source Category" to a number of interested parties; including the Pharmaceutical Manufacturers Association (PMA), state water pollution control agencies, and some municipal authorities. This document did not include recommendations for effluent limitations, new source performance standards, or pretreatment standards, but rather presented a technical basis for the currently proposed regulations. A summary of the comments received to date and EPA's response are presented here.

1. *Comment:* The use of means and medians for traditional and priority pollutants, respectively, is not a meaningful approach for such a diverse industry as pharmaceuticals.

Response: The Agency recognizes the diversity and complexity of the pharmaceutical industry and appreciates the potential problem this might pose for the development of effluent regulations using mean and median values. However, despite this diversity in manufacturing processes, few differences were found in the quality of plant effluents from different plants after biological treatment. To further ensure reasonable results, the plants contributing to the data base have been chosen to represent the total industry performance. However, no workable alternative short of a separate regulation for every plant has been proposed, and even here variations in plant operations from time to time would cause difficulties. A plant-by-plant regulation would defeat a major purpose of whole industry regulation, that of a pre-stated limitation designed to promote an equitable basis among competitors and long range planning.

2. *Comment:* The inclusion of animal health and therapeutic feed products in the data base contradicts the statement that animal feeds which include pharmaceutically-active ingredients such as vitamins and antibiotics are specifically excluded from the pharmaceutical manufacturing category.

Response: The exclusion referenced is not of the animal health products and therapeutic feed supplements, but rather of the feeds themselves to which such additives and supplements might be added. Thus, the inclusion of data on wastes from manufacturing of the pharmaceutically-active ingredients, such as that cited, is proper.

3. *Comment:* If, as stated, verification data were obtained for some of the same plants which were included in the screening data, there is a danger of double-weighting those plants unless one data set is omitted.

Response: Verification data is now being substituted for and supersedes screening data where available. An exception is being made in the case of one plant in which there were substantially different production modes at the time the two sets of data were obtained, leading to a decision to retain both and treat them as separate data inputs.

4. *Comment:* Priority pollutants found in the wastewater of a multi-subcategory plant as the result of particular subcategory operations may be attributed also to the other subcategory operations conducted by

that plant. As a result, the use of multi-subcategory pollutant concentration and loading data in each of the subcategories represented results in greater than proper weighting to multi-subcategory as compared to single subcategory plants.

Response: There is a problem in interpreting the concentration and loading data crossing over from subcategory to subcategory, since they are not fully distinguished in multi-subcategory plants. This situation is caused by the difficulty in determining subcategory contributions of wastewaters in the basic data as obtained. As a result, the basic data on priority and traditional pollutants are more accurately interpreted when subcategory distinctions are eliminated. This is one reason why the Agency has decided to develop one set of limits for the industry beyond BPT.

5. *Comment:* The co-mingling of flow data for direct and indirect dischargers is questionable. Indirect dischargers (i.e., those plants discharging to POTWs) are much more numerous in EPA's collected data than direct dischargers (i.e., those plants discharging directly to the receiving waters). Because the indirect discharging plants are more often smaller plants and because the flows to POTWs are often curtailed to reduce sewer user charges, the inclusion of such flows in an evaluation to be used as a basis of effluent guidelines and standards applicable to direct dischargers introduces an unfair bias. Flow data for indirect dischargers should be analyzed separately from flow data for direct dischargers.

Response: The Agency has found that it is feasible to separate the flow data of direct from indirects in the development of this regulation. Cost data has now been developed on a plant-by-plant basis for each direct discharger based on flow data supplied to the Agency by the individual plant in the 308 data gathering effort.

6. *Comment:* Standards for cyanide destruction by means of chlorination are apparently based on performance of such units in the electroplating industry. This may be seriously overestimating the achievable performance of the same technology in pharmaceutical wastes which have a high organic material content. The performance of alkaline pyrolysis has been demonstrated on a single process stream, and it is impossible to predict performance for other streams. Cyanide destruction has not been demonstrated to achieve 40 µg/l level as implied in the document.

Response: The technical discussion in the development document relating to the electroplating industry has been

modified to indicate that it is intended for comparison only. The proposed cyanide limits are based on long term performance data from the pharmaceutical industry. The screening and verification sampling programs show that these limits are attainable. However, because these are end-of-pipe concentrations, they are not necessarily concentrations achievable directly by destruction systems alone. Since the cyanide destruction performance data is sparse (from only one plant for this industry), the Agency invites other pharmaceutical plants to submit long term performance data on cyanide removal.

XIX. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any specific deficiencies in the record of this proposal be pointed out and that suggested revisions or corrections be supported by data.

EPA is particularly interested in receiving additional comments and information in connection with the following:

(1) EPA requests comments on its intention to collapse the subcategory scheme. For the purpose of regulation beyond BPT, four of the five original subcategories are collapsed to give one large subcategory. The fifth subcategory, Pharmaceutical Research, has been excluded. Comments are specifically invited on an alternate subcategory scheme which separates formulation-only facilities from all other plants.

The Agency is concerned that facilities with high raw waste loads may have difficulty meeting the proposed effluent limitations and is considering revising the subcategorization scheme for the industry to take this into account. Therefore, the Agency is requesting comments supported by data from direct dischargers which generate characteristically high raw waste loads of traditional pollutants (plants that employ A and C subcategory production processes); we are specifically interested in receiving information on the technical and economic achievability of the proposed limitations. Technical data should include a complete description of the treatment system in-place, long term influent and effluent monitoring data, and any process information which would be useful in evaluating the effectiveness of biological treatment as applied to the waste loads from these plants. The economic information should include annual, operating and capital costs for the treatment in-place

as well as cost estimates for any modifications or additions to this system that may be required to comply with the proposed BCT and BAT limitations.

(2) EPA has obtained from the industry a substantial data base for the control and treatment technologies which serve as the basis for the proposed regulations. Plants which have not submitted data, or which have compiled more recent data or engineering studies than already submitted, are requested to forward these data to EPA. These data should include individual data points, not averages or other summary data, and should also include flow, production, and all pollutant parameters for which analyses were run. Please submit any qualifications to the data, such as descriptions of facility design, operating procedures, and upset problems during the period that the data were collected.

(3) EPA requests that POTWs which receive wastewaters from pharmaceutical plants submit data which would document (a) interference with collection system and treatment plant operations; (b) permit violations; (c) sludge disposal difficulties; or (d) pass through of volatile toxic organics such as benzene, toluene and methylene chloride.

(4) EPA requests that long term daily data on the performance of cyanide destruction systems be submitted by plants which may be affected by cyanide limitations and standards.

(5) EPA requests long term daily data on the performance of in-plant steam strippers be submitted by plants currently using this technology to enable us to evaluate the reliability of our current estimate of its capability to attain long term average levels of total volatile organics of 1.2 mg/l.

(6) EPA requests comments and data concerning percent reduction limitations. Although the existing BPT regulations were promulgated in the form of percent reduction limitations, EPA is proposing concentration limitations in this rulemaking. The Agency specifically invites comments on the following alternative regulation approaches: (1) Percent reduction limitations, (2) percent reduction limitations in combination with minimum concentration limitations, and (3) sliding scale percent reduction limitation dependent on raw waste levels. All comments should be supported by data where possible and should indicate why a particular approach is more equitable or economically achievable than the others.

(7) To determine the economic impact of this regulation, the Agency has

calculated the cost of installing BPT, BCT, BA, PSES, NSPS and PSNS for the 464 manufacturing facilities for which data was available. The details of the estimated costs and closures resulting in employment losses of an estimated 143 people. The Agency invites comments on these analyses and projections. We particularly seek comments from small or less profitable plants. Comments should focus on the effects of the regulation on: plant closures, employment losses, production costs, the ability to finance non-environmental, investments, product prices, profitability, international competitiveness, and the availability of less costly technology.

XX. OMB Reveiw

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection through contacting the person listed at the begining of this notice.

List of Subjects in 40 CFR Part 439

Drugs, Waste treatment and disposal, Water pollution control.

(Sections 301, 304, 306, 307 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.* as amended by the Clean Water Act of 1977, Pub. L. 95-217.)
Dated November 7, 1982.

Ann M. Gorsuch,
Administrator

Appendix A—Abbreviations, Acronyms, and Other Terms Used in this Notice

Act—The Clean Water Act.
Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, applicable to effluent limitations to be achieved by July 1, 1984, for industrial discharges to surface waters, as defined by Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by Section 304(b)(4) of the Act.

BMP—Best management practices, as defined by Section 304(e) of the Act.

BPT—The best practicable control technology currently available, applicable to effluent limitations to be achieved by July 1, 1977, for industrial discharges to surface waters, as defined by Section 304(b)(1) of the Act.

Classical Pollutants—A general term used to refer to the pollutants of primary concern before the "conventional, nonconventional, and toxic pollutant"

designations set forth in the Act as amended.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217).

Conventional Pollutants—Constituents of wastewater as determined by Section 304(a)(4) of the Act, including, but not limited to, pollutants classified as biological oxygen demand, suspended solids, oil and grease, fecal coliform, and pH.

Development Document—Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category, prepared by the Effluent Guidelines Division of EPA.

Direct Discharger—An industrial discharger that introduces wastewater to a receiving body of water or land, with or without treatment by the discharger.

Economic Analysis—Economic Impact Analysis of Proposed Effluent Limitations, New Source Performance Standards, and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category, prepared by the Office of Analysis and Evaluation of EPA.

Effluent Limitation—A maximum amount (mass) per day or per unit of production (or per other unit) of each specific constituent of the effluent that is subject to limitation from an existing point source. Allowed pollutant discharge may be expressed as a concentration in milligrams per liter (mg/l).

Federal Water Pollution Control Act Amendments of 1972—Public Law 92-500, which provides the legal authority for current EPA water pollution abatement projects, regulations, and policies. The Federal Water Pollution Control Act was amended further in 1977 in legislation referred to as The Clean Water Act.

Indicator Pollutants—A group of pollutants, including, but not limited to, BOD₅, COD, and TSS, which can serve as a basis for limitations on toxic pollutants, which in themselves are very difficult to monitor and expensive to analyze.

Indirect Discharger—An industrial discharger that introduces wastewater to a publicly-owned collection system.

In-plant Control Technologies—Controls or measures applied within the manufacturing process to reduce or eliminate pollutant and hydraulic loadings of raw wastewater. Typical in-

plant control measures include chemical substitution, material reclamation, water reuse, water reduction, and process changes.

New Source—Industrial facilities from which there is, or may be, a discharge of pollutants, and whose construction is begun after the publication of the proposed regulations.

Nonconventional Pollutants—Parameters selected for use in developing effluent limitation guidelines and new source performance standards which have not been previously designated as either conventional pollutants or toxic pollutants.

Non-Water Environmental Quality Impact—Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to, air pollution, noise, radiation, sludge and solid waste generation, and energy usage.

NPDES—National Pollutant Discharge Elimination System, a Federal program requiring industry and municipalities to obtain permits to discharge plant effluents to the nation's water courses, under Section 402 of the Act.

NSPS—New source performance standards, applicable to industrial facilities whose construction is begun after the publication of the proposed regulations, as defined by Section 306 of the Act.

Performance Standards—Performance standards are applicable to new sources, as opposed to existing sources, which are subject to effluent limitations.

Point Source Category—A collection of industrial sources with similar function or product, established by Section 306(b)(1)(A) of the Federal Water Pollution Control Act, as amended for the purpose of establishing Federal standards for the disposal of wastewater.

Pollutant Loading—Total daily mass discharge of a particular pollutant expressed in terms of kg/day.

POTW—Publicly owned treatment works, facilities that collect, treat, or otherwise dispose of wastewaters, owned and operated by a village, town, county, authority, or other public agency.

Pretreatment Standard—Industrial wastewater effluent quality required for discharge to a publicly-owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges, under Section 307(b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976,

Amendments to Solid Waste Disposal Act.

Revised Settlement Agreement—A rewritten form of the Settlement Agreement which described provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories.

Settlement Agreement—Agreement entered into by EPA with the Natural Resources Defense Council and other environmental groups and approved by the U.S. District Court for the District of Columbia on June 7, 1976. One of the principal provisions of the Settlement Agreement was to direct EPA to consider an extended list of 65 classes of pollutants in 21 industrial categories, including miscellaneous chemicals of which pharmaceutical manufacturing is a part, in the development of effluent limitations guidelines and new source performance standards.

SIC—Standard Industrial Classification, a numerical categorization scheme used by the U.S. Department of Commerce to denote segments of industry.

Toxic Pollutants—All compounds specifically named or referred to in the Settlement Agreement, as well as recommended specific compounds representative of the nonspecific or ambiguous groups or compounds named in the agreement. This list of pollutants was developed based on the use of criteria such as known occurrence in point source effluents, in the aquatic environment, in fish, in drinking water, and through evaluations of carcinogenicity, other chronic toxicity, bioaccumulation, and persistence.

Appendix B—Toxic Pollutants Not Detected in the Treated Effluents of Direct Dischargers

acenaphthene
benzidine
1,1-dichloroethane
1,2,4-trichlorobenzene
hexachlorobenzene
hexachloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
chloroethane
bis(chloromethyl) ether *
bis(2-chloroethyl) ether
2-chloroethyl vinyl ether
2-chloronaphthalene
2,4,6-trichlorophenol
parachlorometa cresol
2-chlorophenol
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
1,1-dichloroethylene
2,4-dichlorophenol

1,2-dichloropropane
1,3-dichloropropylene
2,4-dinitrotoluene
2,4-dimethyl phenol
2,6-dinitrotoluene
1,2-diphenylhydrazine
fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
bis(2-chloroethoxy) methane
methyl bromide
bromoform
dichlorobromomethane
dichlorodifluoromethane *
chlorodibromomethane
hexachlorobutadiene
hexachlorocyclopentadiene
isophorone
naphthalene
nitrobenzene
2-nitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
N-nitrosodi-n-propylamine
pentachlorophenol
butyl benzyl phthalate
di-n-octyl phthalate
dimethyl phthalate
benzo(a)anthracene
benzo(a)pyrene
3,4-benzofluoranthene
benzo(k)fluoranthene
chrysene
acenaphthylene
anthracene
benzo(ghi)perylene
fluorene
phenanthrene
dibenzo(a,h)anthracene
ideno(1,2,3-C,D)pyrene
pyrene
aldrin
dieldrin
chlorane
4,4'-DDT
4,4'-DDE
4,4'-DDD
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
alpha-BHC
beta-BHC
gamma-BHC (lindane)
delta-BHC
PCB-1242
PCB-1254
PCB-1221
PCB-1232
PCB-1248
PCB-1260
PCB-1016
toxaphene
asbestos (fibrous)

* No longer on the list of priority pollutants.

beryllium (total)
2,3,7,8-tetrachloro-
dibenzo-p-dioxin (TCDD)

**APPENDIX C—Toxic Pollutants
Detected in Treated Effluents of Direct
Dischargers: (1) From a Small Number of
Sources, (2) Detected in Only Trace
Amounts or (3) Sufficiently Controlled
by Existing Technologies**

Pollutant	Basis for exclusion
acrolein.....	1
benzene.....	3
carbon tetrachloride.....	2
1,2-dichloroethane.....	2, 3
1,1,1-trichloroethane.....	2, 3
chloroform.....	1, 2
ethylbenzene.....	2
bis(2-chloroisopropyl) ether.....	1
methylene chloride.....	1, 2, 3
methyl chloride.....	1, 2, 3
trichlorofluoromethane*.....	1, 2
4-nitrophenol.....	3
2,4-dinitrophenol.....	3
phenol.....	3
bis(2-ethylhexyl) phthalate.....	2
di-n-butyl phthalate.....	2
diethyl phthalate.....	2
tetrachloroethylene.....	2
toluene.....	3
trichloroethylene.....	3
vinyl chloride.....	2
antimony.....	1
arsenic.....	2
cadmium.....	2
chromium.....	2
copper.....	2
lead.....	2
mercury.....	2
nickel.....	2
selenium.....	2
silver.....	2
thallium.....	2
zinc.....	1, 2

*Trichlorofluoromethane has been deleted from the list of toxic pollutants (see 48 FR 2264).

**Appendix D—Toxic Pollutants Not
Detected in the Effluent of Indirect
Dischargers**

acenaphthene
benzidine
1,2,4-trichlorobenzene
hexachlorobenzene
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
chloroethane
bis(chloromethyl) ether*
bis(2-chloroethyl) ether
2-chloroethyl vinyl ether
2-chloronaphthalene
2,4,6-trichlorophenol
parachlorometa cresol
2-chlorophenol
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
2,4-dichlorophenol
1,2-dichloropropane
1,3-dichloropropylene
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
fluoranthene

* No longer on the list of priority pollutants.

4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
bis(2-chloroethoxy) methane
methyl bromide
bromoform
dichlorobromomethane
dichlorodifluoromethane*
chlorodibromomethane
hexachlorobutadiene
hexachlorocyclopentadiene
isophorone
naphthalene
nitrobenzene
4-nitrophenol
2,4-dinitro phenol
4,6-dinitro-o-cresol
N-nitrosodi-n-propylamine
pentachlorophenol
butyl benzyl phthalate
di-n-octyl phthalate
dimethyl phthalate
benzo(a)anthracene
benzo(a)pyrene
3,4-benzofluoranthene
benzo(k)fluoranthene
chrysene
acenaphthylene
anthracene
benzo(ghi)perylene
phenanthrene
dibenzo(a,h)anthracene
ideno(1,2,3-C,D)pyrene
pyrene
aldrin
dieldrin
chlorane
4,4'-DDT
4,4'-DDE
4,4'-DDD
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
alpha-BHC
beta-BHC
gamma-BHC (lindane)
delta-BHC
PCB-1242
PCP-1254
PCB-1221
PCB-1232
PCB-1248
PCB-1260
PCB-1018
toxaphene
asbestos (fibrous)
beryllium (total)
2,3,7,8-tetrachloro-
dibenzo-p-dioxin (TCDD)

**Appendix E—Toxic Pollutants Detected
in the Effluent of Indirect Dischargers
Whose Toxicity and Amount (Taken
Together) Is So Insignificant as not to
Justify Developing Pretreatment
Regulations**

methyl chloride
1,2-dichlorobenzene
2,4-dimethylphenol
2-nitrophenol
N-nitrosodiphenylamine
phenol
bis(2-ethyl hexyl) phthalate
diethyl phthalate
fluorene
antimony
arsenic
beryllium
cadmium
chromium
copper
lead
mercury
nickel
selenium
silver
thallium
zinc
dichlorodifluoromethane*
trichlorofluoromethane*

**Appendix F—Toxic Pollutants Not
Excluded from Regulation by
Pretreatment Standards**

cyanide
acrolein
acrylonitrile
benzene
carbon tetrachloride
chlorobenzene
1,2-dichloroethane
1,1,1-trichloroethane
1,1-dichloroethane
chloroform
1,1-dichloroethylene
1,2-trans-dichloroethylene
ethyl benzene
methylene chloride
bromoform
tetrachloroethylene
toluene
trichloroethylene

EPA proposes to amend 40 CFR Part 439 to read as follows:

1. By adding the following to the table of contents:

PART 439—[AMENDED]

* * * * *

* No longer on the list of priority pollutants.

Subpart F—Best Conventional Technology Limitations, Best Available Technology Limitations, New Source Performance Standards and Pretreatment Standards for existing and New Sources

Sec.

- 439.60 Applicability; description of the pharmaceutical manufacturing industry.
 439.61 Specialized definitions.
 439.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
 439.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
 439.64 Standards of performance for new sources (NSPS).
 439.65 Pretreatment standards for existing sources (PSES).
 439.66 Pretreatment standards for new sources (PSNS).

2. By adding new § 439.12(a) (6) and (7) to read as follows:

§ 439.12 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) * * *

(6) The maximum average of daily TSS values for any 30 consecutive days shall be 217 mg/l.

7. The allowable effluent discharge for cyanide shall be a maximum for any one day of not more than 0.643 mg/l and a maximum average of daily values for 30 consecutive days of 0.375 mg/l.

3. By revising § 439.22(a)(6) and adding a new (a)(8) to read as follows:

439.22 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) * * *

(6) The maximum average of daily TSS values for any 30 consecutive days shall be 217 mg/l

* * *

(8) The allowable effluent discharge for cyanide shall be a maximum for any one day or 0.643 mg/l and a maximum average of daily values for 30 consecutive days of 0.375 mg/l.

4. By adding a new § 439.32(a) (7) and (8) to read as follows:

§ 439.32 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) * * *

(7) The maximum average of daily TSS values for any 30 consecutive days be 217 mg/l.

(8) The allowable effluent discharge for cyanide shall be a maximum for any one day of 0.643 mg/l and a maximum average of daily values for 30 consecutive days of 0.375 mg/l.

5. By revising § 439.42(a)(6) and adding a new (a)(8) to read as follows:

§ 439.42 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) * * *

(6) The maximum average of daily TSS values for any 30 consecutive days be 217 mg/l.

* * *

(8) The allowable effluent discharge for cyanide shall be a maximum for any one day or 0.643 mg/l and a maximum average of daily values for 30 consecutive days of 0.375 mg/l.

6. By revising § 439.52(a)(6) to read as follows:

§ 439.52 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) * * *

(6) The maximum average of daily TSS values for any 30 consecutive days be 217 mg/l.

* * *

§§ 439.12, 439.22, 439.32, 439.42 and 439.52 [Amended]

7. By removing the undesignated paragraph at the beginning of §§ 439.12, 439.22, 439.32, 439.42, and 439.52, and by inserting before paragraph (a) of each of those sections the words, "Except as provided in § 125.30-32, * * *"

8. By amending §§ 439.12(a)(1), 439.22(a)(2), 439.32(a)(2), 439.42(a)(2), and 439.52(a)(2) by adding the following language at the end of each of these paragraphs:

"or 113 mg/l daily average in any calendar month, whichever is less stringent."

9. By amending §§ 439.12(a)(2), 439.22(a)(3), 439.32(a)(3), 439.42(a)(3), and 439.52(a)(3) by adding the following language at the end of each of these paragraphs:

"or 570 mg/l daily average in any calendar month, whichever is less stringent."

10. By adding a new Subpart F as follows to 40 CFR Part 439 to read as follows:

Subpart F—Best Conventional Technology Limitations, Best Available Technology Limitations, New Source Performance Standards and Pretreatment Standards for Existing and New Sources

§ 439.60 Applicability; description of the pharmaceutical manufacturing industry.

The provisions of this subpart are applicable to discharges containing process wastes that enter the waters of the United States and to introductions of pollutants into publicly owned treatment works resulting from the manufacture of pharmaceuticals by fermentation, extraction, chemical synthesis, mixing/compounding and formulation operations.

§ 439.61 Specialized definitions.

For the purpose of this subpart except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401, shall apply to this subpart.

§ 439.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reductions attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter (mg/l)		
BOD ₅	252	113
TSS.....	258	104
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0 at all times.

(b) Dilution in order to meet the above effluent limitations may not be practiced.

§ 439.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter (mg/l)		
COD.....	1024	570
Total cyanide.....	0.643	0.375

(b) Dilution in order to meet the above effluent limitations may not be practiced.

§ 439.64 Standards of performance for new sources (NSPS).

(a) Any new source subject to this subpart must achieve the following new source performance standards [NSPS]:

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter (mg/l)		
BOD ₅	126	51
COD.....	853	449
TSS.....	195	72
Total Cyanide.....	0.643	0.375
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0 at all times.

Dilution in order to meet the above effluent limitations, may not be practiced.

§ 439.65 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by July 1, 1984 achieve the following pretreatment standards for existing sources (PSES):

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter (mg/l)		
Total cyanide.....	0.643	0.375

§ 439.66 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter (mg/l)		
Total cyanide.....	0.643	0.375

[FR Doc. 82-31138 Filed 11-24-82; 8:45 am]

BILLING CODE 6560-50-M

Registered Federal Labor

Friday
November 26, 1982

Part III

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions

DEPARTMENT OF LABOR**Employment Standards
Administration, Wage and Hour
Division****Minimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions**

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage

determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

**Modifications and Supersedes
Decisions to General Wage
Determination Decisions**

Modifications and supersedes decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedes decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the

specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedes decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

**Modifications to General Wage
Determination Decisions**

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA82-5112	July 4, 1982.
CA82-5120	Aug. 27, 1982.
Colorado: CO82-5103	Feb. 12, 1982.
Louisiana:	
LA82-4021	May 7, 1982.
LA82-4050	Oct. 15, 1982.
LA82-4053	Nov. 5, 1982.
Colorado: CO82-5127	Do.
Massachusetts:	
MA81-3054	Sept. 4, 1981.
New Jersey:	
NJ81-3053	Oct. 9, 1981.
NJ81-3063	Dec. 28, 1981.
Texas:	
TX82-4001	Jan. 29, 1982.
TX82-4002	Jan. 15, 1982.
TX82-4029	June 18, 1982.
TX82-4033	Do.
TX82-4042	Aug. 20, 1982.
TX82-4046	Oct. 1, 1982.
TX82-4054	Nov. 5, 1982.
Utah: UT82-5121	Sept. 3, 1982.
Wyoming: WY82-5106	Mar. 12, 1982.

**Supersedes Decisions to General Wage
Determination Decisions**

The numbers of the decisions being superseded and their dates of

publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Idaho: ID81-5157 (ID82-5128)..... Oct. 9, 1981.

Minnesota:

MN81-2044 (MN82-2064)..... July 17, 1981.

MN81-2045 (MN82-2065)..... Do.

MN81-2048 (MN82-2065)..... Do.

Oklahoma:

OK81-4051 (OK82-4063)..... July 10, 1981.

OK81-4069 (OK82-4062)..... Sept. 4, 1981.

OK81-4072 (OK82-4061)..... Do.

Signed at Washington, D.C. this 19th day of November 1982.

Dorothy P. Come,

Assistant Administrator Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. CA82-5112 - Mod. #6 -
(47 FR 31154 - July 4, 1982)

Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties, California

Change:	Basic Hourly Rates	Fringe Benefits
Carpenters:		
Area 1:	\$20.28	\$4.875
Carpenters		
Hardwood Floorlayers;		
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 2:	20.43	4.875
Carpenters	20.28	5.875
Hardwood Floorlayers;	20.39	4.875
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 3:	17.65	4.875
Carpenters		
Hardwood Floorlayers;		
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 4:	17.80	4.875
Carpenters	18.55	5.875
Hardwood Floorlayers;	20.39	4.875
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 5:	18.55	4.875
Carpenters		
Hardwood Floorlayers;		
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 6:	18.70	4.875
Carpenters	19.45	5.875
Hardwood Floorlayers;	20.39	4.875
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		

DECISION NO. CA82-5120 - Mod. #3 -
(47 FR 38022 - August 27, 1982)

Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tuolumne, Yolo and Yuba Counties, California

Change:	Basic Hourly Rates	Fringe Benefits
Carpenters:		
Area 1:	\$20.28	\$4.875
Carpenters		
Hardwood Floorlayers;		
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 2:	20.43	4.875
Carpenters	20.28	5.875
Hardwood Floorlayers;	20.39	4.875
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 3:	17.65	4.875
Carpenters		
Hardwood Floorlayers;		
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 4:	17.80	4.875
Carpenters	18.55	5.875
Hardwood Floorlayers;	20.39	4.875
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 5:	18.55	4.875
Carpenters		
Hardwood Floorlayers;		
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		
Area 6:	18.70	4.875
Carpenters	19.45	5.875
Hardwood Floorlayers;	20.39	4.875
Shinglers; Power		
Saw Operator; Steel		
Scaffold Erector		
and Steel Shoring;		
Saw Filers		
Millwrights		
Piledrivermen		

MODIFICATION PAGE 2

DECISION NO. LA82-4021 -
MOD. #5
(47 FR 19877 - 5/7/82)

Bossier & Caddo Parishes, Louisiana

Change:	Basic Hourly Rates	Fringe Benefits
Asbestos workers	\$16.29	2.885
Asbestos workers-Zone 2		
Electricians:		
Zone 3 -Electricians	17.70	2.00+
		3-5/10%
Cable splicers	18.20	
Line construction:		
Zone 3:		
Linemens, equipment op.	17.70	2.00+
		3-1/10%
Cable splicers	18.20	
Groundmen	15.70	
Lathers - Zone 8	13.40	2.20
Power equipment ops.:		
Group 1	10.07	2.20
Group 2	11.31	2.20
Group 3	11.05	2.20
Group 4	11.42	2.20
Group 5	13.25	2.20
Group 6	12.00	2.20

DECISION NO. LA82-4022 -
MOD. #7
(47 FR 19877 - 5/7/82)

Calcasieu Par., Louisiana

Change:	Basic Hourly Rates	Fringe Benefits
Electricians:		
Other electricians:	17.70	2.00+
Electricians		3-5/10%
Cable splicers	18.20	
Asbestos workers		
Asbestos workers-Zone 2		
Electricians:		
Zone 3 -Electricians	17.70	2.00+
		3-5/10%
Cable splicers	18.20	
Line construction:		
Zone 3, 4 & 5:		
Group 1	17.70	2.00+
Group 2	18.20	3-1/10%
Group 3	15.70	

DECISION NO. LA82-4050 -
MOD. #3
(47 FR 46231 - 10/15/82)

Jefferson, Orleans, Bossier, Caddo, Calcasieu, Beauregard, Cameron, Jefferson, Davis, Allen, Plaquemines, St. Bernard, St. Charles, Parishes, Louisiana

Change:	Basic Hourly Rates	Fringe Benefits
Electricians:		
Zones 3, 4 & 5:		
Electricians	17.70	2.00+
Cable splicers	18.20	3-5/10%
Line construction:		
Zone 3, 4 & 5:		
Group 1	17.70	2.00+
Group 2	18.20	3-1/10%
Group 3	15.70	

DECISION NO. LA82-4053 - MOD. #1 (47 FR 50421 - 11/5/82)	Basic Hourly Rates	Fringe Benefits
Statewide Louisiana		
CHANGE:		
Asbestos workers-Zone 2	\$16.29	2.885
Electricians:		
Zone 3 -Electricians	17.70	2.00+
		3-5/10%
Cable splicers	18.20	
Line construction:		
Zone 3:		
Linemens, equipment op.	17.70	2.00+
		3-1/10%
Cable splicers	18.20	
Groundmen	15.70	
Lathers - Zone 8	13.40	2.20
Power equipment ops.:		
Group 1	10.07	2.20
Group 2	11.31	2.20
Group 3	11.05	2.20
Group 4	11.42	2.20
Group 5	13.25	2.20
Group 6	12.00	2.20

DECISION NO. CO82-5127 - Mod. #2
(47 FR 50418 - November 5, 1982)
Las Animas, Otero and Pueblo Counties, Colorado

Change:	Basic Hourly Rates	Fringe Benefits
Sprinkler Fitters	\$16.67	\$2.83

DECISION NO. M881-3054 - MOD. #5 (46 FR 44631 - September 4, 1981)	Basic Hourly Rates	Fringe Benefits
BARNSTABLE, BRISTOL, DUKES, ESSEX, MIDDLESEX, NANTUCKET, NORFOLK, PLYMOUTH AND SUFFOLK COUNTIES, MASS.	17.61	2.81+a
CHANGE: POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION CLASS I Hourly premium for boom lengths including jib: Over 150 ft. + .62 Over 185 ft. + 1.11 Over 210 ft. + 1.55 Over 250 ft. + 2.35 Over 295 ft. + 3.27	17.49 14.78 16.09 13.13 13.92	2.81+a 2.81+a 2.81+a 2.81+a 2.81+a
TRUCK DRIVERS CLASS I	11.86	2.65+a
CLASS II	12.03	2.65+a
CLASS III	12.10	2.65+a
CLASS IV	12.22	2.65+a
CLASS V	12.32	2.65+a
CLASS VI	12.61	2.65+a
CLASS VII	12.90	2.65+a
POWER EQUIPMENT OPERATOR: HEAVY AND HIGHWAY CON- STRUCTION: CLASS I Hourly premium for boom lengths including jib: Over 150 ft. + .62 Over 185 ft. + 1.11 Over 210 ft. + 1.55 Over 250 ft. + 2.35 Over 295 ft. + 3.27	17.61 14.78 16.09 13.13 13.92	2.81+a 2.81+a 2.81+a 2.81+a 2.81+a
POWER EQUIPMENT OPERATORS: MARINE CONSTRUCTION CLASS I Hourly premium for boom lengths including jib: Over 150 ft. + .62 Over 185 ft. + 1.11 Over 210 ft. + 1.55	17.61 14.78 16.09	

DECISION NO. NJ81-3053 - MOD. #15 (46 FR 50243 - October 9, 1981)	Basic Hourly Rates	Fringe Benefits
BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESEX, MORRIS, PASSAIC, SOMERSET, SUSSEX, UNION AND WARREN COUNTIES, NEW JERSEY	17.49 14.78 16.09 13.13 13.92	2.81+a 2.81+a 2.81+a 2.81+a 2.81+a
CHANGE: ASBESTOS WORKERS: ZONE 2	11.86	2.65+a
BRICKLAYERS, CEMENT MASONS, PLASTERERS & MASONS:	12.03	2.65+a
ZONE 2	12.10	2.65+a
CARPENTERS, INSULATORS & MILLWRIGHTS:	12.22	2.65+a
ZONE 1	12.32	2.65+a
ZONE 2	12.61	2.65+a
ZONE 3	12.90	2.65+a
Carpenters & Insulators Millwrights	12.90	2.65+a
ZONE 4		
Carpenters & Insulators Millwrights		
ZONE 5		
Carpenters & Insulators Millwrights		
ELCTRICIANS & CABLE SPLICERS:		
ZONE 5		
ZONE 11		
ZONE 12		
LABORERS, BUILDING CON- STRUCTION:		
ZONE 9		
Laborers		
ZONE 10		
ZONE 17		
LINE CONSTRUCTION (EX- CLUDING RAILROAD CON- STRUCTION):		
ZONE 12		
Linemen, Equipment Operator & Cable Splicers Groundmen winch Op.		

DECISION NO. NJ81-3053 - MOD. #15 (46 FR 50243 - October 9, 1981)	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS, CEMENT MASONS, PLASTERERS & STONE MASONS ZONES: ZONE 10	16.89	5.68
Parts of Somerset, Morris and Hunterdon Counties. At Old Mill Inn Route 202 follow Passaic River to the Dead River from thence to Sunset Lake at Pluckemin; follow Chambers Brook to Old- wick to Fairmount. Hunterdon County across the county line to Long Valley in Morris County; thence across from Long Valley into Chester, 3 miles north of Chester to Muskrat, then back across into Ralston, Morris County. then follow Morris Somerset County line into Mendham Township; then we go across Morris County line in- to Somerset. Back to the Old Mill Inn in Bernardsville, Route 202, Somerset County.)	16.99	2.07
CARPENTERS, INSULATORS & MILLWRIGHTS:	15.35 14.35	3.88 3.15
ZONE 1	16.01	20.5%
ZONE 2	16.51	20.5%
ZONE 3	16.01	20.5%
ZONE 4	16.51	20.5%
ZONE 5	16.01	20.5%
ZONE 11	16.81	20.5%
ZONE 12	18.72	21.5%
LABORERS, BUILDING CON- STRUCTION:	18.00	25%+.02
ZONE 9	16.00	10%+
Laborers		1.02
ZONE 10		
ZONE 17		
LINE CONSTRUCTION (EX- CLUDING RAILROAD CON- STRUCTION):		
ZONE 12		
Linemen, Equipment Operator & Cable Splicers Groundmen winch Op.		

DECISION NO. M881-3054 - MOD. #5 (46 FR 44631 - September 4, 1981)	Basic Hourly Rates	Fringe Benefits
BARNSTABLE, BRISTOL, DUKES, ESSEX, MIDDLESEX, NANTUCKET, NORFOLK, PLYMOUTH AND SUFFOLK COUNTIES, MASS.	17.61	2.81+a
CHANGE: POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION CLASS I Hourly premium for boom lengths including jib: Over 150 ft. + .62 Over 185 ft. + 1.11 Over 210 ft. + 1.55 Over 250 ft. + 2.35 Over 295 ft. + 3.27	17.49 14.78 16.09 13.13 13.92	2.81+a 2.81+a 2.81+a 2.81+a 2.81+a
TRUCK DRIVERS CLASS I	11.86	2.65+a
CLASS II	12.03	2.65+a
CLASS III	12.10	2.65+a
CLASS IV	12.22	2.65+a
CLASS V	12.32	2.65+a
CLASS VI	12.61	2.65+a
CLASS VII	12.90	2.65+a
POWER EQUIPMENT OPERATOR: HEAVY AND HIGHWAY CON- STRUCTION: CLASS I Hourly premium for boom lengths including jib: Over 150 ft. + .62 Over 185 ft. + 1.11 Over 210 ft. + 1.55 Over 250 ft. + 2.35 Over 295 ft. + 3.27	17.61 14.78 16.09 13.13 13.92	2.81+a 2.81+a 2.81+a 2.81+a 2.81+a
POWER EQUIPMENT OPERATORS: MARINE CONSTRUCTION CLASS I Hourly premium for boom lengths including jib: Over 150 ft. + .62 Over 185 ft. + 1.11 Over 210 ft. + 1.55	17.61 14.78 16.09	

MODIFICATION PAGE 6

DECISION NO. N781-3063 - MOD. #10 (46 FR 62746 - Dec. 28, 1981) ATLANTIC, BURLINGTON, CAMDEN, CAPE MAY, CUMBER- LAND, GLOUCESTER, MERCER, MONMOUTH, OCEAN AND SALEM COUNTIES, NEW JERSEY	Basic Hourly Rates	Fringe Benefits
CHANGE: ASBESTOS WORKERS: ZONE 4	17.99	3.69
BOILERMAKERS BRICKLAYERS, STONEMASONS, MARBLE MASON, CEMENT MASONS, PLASTERERS, TILE LAYERS AND TERRAZZO WORKERS: ZONE 3	16.60	388+.29
CARPENTERS, MILLWRIGHTS AND INSULATORS: ZONE 2	13.95	3.00
Carpenters & Insulators Millwrights ZONE 5	16.70	15.58
Carpenters & Insulators Millwrights ZONE 6	16.95	15.58
Carpenters & Insulators Millwrights ELECTRICIANS & CABLE SPLICERS: ZONE 2	16.70	15.58
ZONE 3	18.82	168+
ZONE 4	17.84	1.15
ZONE 5	17.50	108+
LABORERS, BUILDING CON- STRUCTION: ZONE 1	16.83	1.60
Laborers, Masons' & Plasterers' Tenders & Concrete Workers	10.90	1.89
		108+
		2.38
		1.95

Basic Hourly Rates	Fringe Benefits

MODIFICATION PAGE 5

DECISION NO. N781-3053 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
ADD: CARPENTERS, INSULATORS & MILLWRIGHTS: ZONE 6	16.70	15.58
CARPENTER & INSULATORS & MILLWRIGHTS ZONES: ZONE 6	17.20	15.58
Passaic County and the City of Garfield and Borough of Lodi and Wallington in Bergen County.		

Basic Hourly Rates	Fringe Benefits
17.95	10.758
13.48	10.758
14.63	10.758
	1.00
10.15	k+1+m+
10.85	k+1+m+
11.00	k+1+m+
11.05	k+1+m+
11.20	k+1+m+
11.40	k+1+m+
11.55	k+1+m+

LINE CONSTRUCTION
(EXCLUDING RAILROAD
CONSTRUCTION):
ZONE 4
Linemen
Line Digger Truck
Drivers
Groundmen
TRUCK DRIVERS
ZONE 2
GROUP 1
GROUP 2
GROUP 3
GROUP 4
GROUP 5
GROUP 6
GROUP 7

DECISION NO. NJ81-3063 -
(CONT'D)

FOOTNOTES:

- k. Employer contributes \$48.50 per week per employee to Health and Welfare Funds.
- l. Employer contributes \$53.00 per week per employee to Pension Funds.
- m. Employee who has worked or receive pay for 90 days within a year prior to his anniversary date shall receive 56 hours straight time vacation pay; for 3 years but less than 8 years of service he will receive 100 hours of straight time vacation pay; 15 years or more he will receive 165 hours of straight time vacation pay.
- n. Paid Holidays: A through F, plus Washington's Birthday, Presidential Election Day, Armistice Day, 2 Personal Holidays, Good Friday, and Christmas Eve afternoon (provided the employee works that morning) on the condition that the employee works or is available for work on at least 2 days in the week in which the holiday occurs.

DECISION NO. TX82-4001 - MOD. #10	Basic Hourly Rates	Fringe Benefits
(47 FR 4463 - 1/29/82) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Don- ley, Gray, Hansford, Hart- ley, Hemphill, Hutchinson, Lipscomb, Moore, Ochil- tree, Oldham, Potter, Ran- dall, Roberts, Sherman, Swisher & Wheeler Cos., Texas		
CHANGE: Carpenters: Zone 2 - Carpenters Millwrights		
DECISION NO. TX82-4002 - MOD. #8		
(47 FR 2472 - 1/15/82) Wichita County, Texas		
CHANGE: Asbestos workers, Carpenters - Carpenters Millwrights	16.29 13.45 13.95	2.885 1.78 1.78
DECISION NO. TX82-4029 - MOD. #10		
(47 FR 26552 - 6/18/82) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas		
CHANGE: Asbestos workers-Zone 2 Carpenters: Zone 2 - Carpenters Millwrights	16.29 11.43 12.45 12.45	2.885 -82 -82
DECISION NO. TX82-4033 - MOD. #7		
(47 FR 26549 - 6/18/82) Galveston & Harris Cos., Texas		
CHANGE: Painters (East Harris Co.) Group 1 Group 2 Group 3 Group 4 Group 5 Group 6	17.53 17.885 17.635 17.78 17.925 18.19	
DECISION NO. TX82-4042 - MOD. #1	Basic Hourly Rates	Fringe Benefits
(47 FR 16522 - 8/20/82) Bowie County, Texas		
CHANGE: Asbestos workers Line construction: Linemen Cable splicers Hole digger op., heavy equip. ops. (or pole cat equivalent); powderman Line truck driver (winch op.) Jackhammerman Groundman Truck driver (flat bed, ton & half & under)	\$16.29 15.90 16.38 14.47 13.04 11.93 10.65 11.29	2.885 3 1/2 3 1/2 3 1/2 3 1/2 3 1/2 3 1/2 3 1/2
DECISION NO. TX82-4046 - MOD. #1	Basic Hourly Rates	Fringe Benefits
(47 FR 43525 - 10/1/82) Jefferson & Orange Cos., Texas		
CHANGE: Truck drivers: Group 1 Group 2 Group 3 Group 4	12.54 13.33 13.33 13.62	1.10 1.10 1.10 1.10
DECISION NO. TX82-4054 - MOD. #1	Basic Hourly Rates	Fringe Benefits
(47 FR 30430 - 11/5/82) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas		
CHANGE: Asbestos workers Carpenters: Zone 2: Carpenters & pile- drivermen Millwrights Cement masons - Zone 1 Glaziers (excluding Grayson Co.)	16.29 15.76 15.45 15.63 15.60	2.885 2.28 3.28 2.07 1.55

MODIFICATION PAGE 9

DECISION NO. TX82-4054 - MOD. #1 (CONT'D)	Basic Hourly Rates	Fringe Benefits
Laborers:		
Zone 2 - Group 1	\$10.04	1.10
Group 2	10.19	1.10
Group 3	10.29	1.10
Group 4	10.44	1.10
Lathers	15.42	2.54
Plumbers & pipefitters:	17.45	.51
Zone 1	16.65	1.96
Zone 2	16.58	2.03
Power equipment ops.:		
Zone 1 - Group 1	15.12	2.35
Group 2	15.52	2.35
Zone 2 - Group 1	7.265	2.30
Group 2	15.17	2.30
Group 3	15.57	2.30

DECISION NO. UT82-5121 - Mod. #3
(47 FR 39085 - September 3, 1982)
Statewide, Utah

Change:	Basic Hourly Rates	Fringe Benefits
Bricklayers	\$13.25	\$1.57
Drywall Installers:		
Taping, finishing and texturing (hand or machine)	13.04	1.44

DECISION NO. WY82-5106 - Mod. #5
(47 FR 10968 - March 12, 1982)
Converse, Goshen, Laramie, Niobrara and Platte Counties, Wyoming

Change:	Basic Hourly Rates	Fringe Benefits
Electricians:		
Area 1:	\$16.50	\$1.50+
Electricians:		3-3/4%
Technicians		

SUPERSEDES DECISION

STATE: Idaho
DECISION NUMBER: ID82-5128
DATE: Date of Publication
Supersedes Decision No. ID81-5157 dated October 9, 1981, in 46 FR 50223
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects

ASBESTOS WORKERS:	Basic Hourly Rates	Fringe Benefits
Area 1	\$16.84	\$2.34
Area 2	16.11	2.29
BOILERMAKERS:		
Area 1	18.41	3.59
Area 2	15.71	3.59
BRICKLAYERS: STONEMASONS, and MARBLE SETTERS:		
Area 1	15.00	1.00
Area 2	16.68	3.10
Area 3	14.97	2.15
Area 4	12.25	1.90
Area 5	14.65	1.50
Area 6	14.35	1.65
CARPENTERS:		
Area 1:		
Group 1	15.85	3.32
Group 2	16.00	3.32
Group 3	16.10	3.32
Group 4	16.25	3.32
Group 5	16.35	3.32
Area 2:		
Zone 1:		
Group 1	13.17	4.20
Group 2	13.34	4.20
Group 3	13.46	4.20
Zone 2:		
Group 1	14.67	4.20
Group 2	14.84	4.20
Group 3	14.96	4.20
Zone 3:		
Group 1	14.92	4.20
Group 2	15.09	4.20
Group 3	15.21	4.20
CEMENT MASONS:		
Area 1: Zone 1:		
Group 1	15.50	3.20
Group 2	16.00	3.20
Group 3	16.50	3.20
Zone Differential (add to Zone 1 Rate):		
Zone 2 - \$1.15		
Zone 3 - 1.60		
Zone 4 - 2.30		
Zone 5 - 2.95		
CEMENT MASONS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Area 2: Zone 1:		
Group 1	\$12.52	\$4.39
Group 2	12.72	4.39
Zone Differential (add to Zone 1 Rate):		
Zone 2 - \$1.50		
Zone 3 - 1.75		
ELECTRICIANS:		
Area 1:	18.95	3.27
Electricians	19.35	3.27
Cable Splicers	15.05	1.65
Area 2:	16.56	1.65
Electricians	15.65	1.65
Cable Splicers	17.22	1.65
Area 3:	18.55	1.65
Electricians:	12.99	1.65
Technicians	17.22	1.65
Cable Splicers	18.55	1.65
ELEVATOR CONSTRUCTORS:		
Area 1:	12.99	1.65
Mechanics	14.045	1.65
Helpers	9.83	1.65
Probationary Helpers	7.02	1.65
Area 2:	12.74	1.65
Mechanics	13.70	1.65
Helpers	14.01	1.65
Probationary Helpers	10.55	1.65
GLAZIERS:		
Area 1	12.74	1.65
Area 2	13.70	1.65
Area 3	14.01	1.65
Area 4	10.55	1.65
IRONWORKERS:		
Ornamental; Reinforcing; Structural:		
Area 1	18.04	3.80
Area 2	16.73	3.30
Area 3	16.12	3.19
PAINTERS:		
Area 1:	15.97	2.46
Brush	16.22	2.46
Drywall Taper	16.47	2.46
Spray; Steel; Steam cleaning		

PAINTERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Area 1: (Cont'd)		
Swing Stage or high work over 30'	\$16.67	\$2.46
Bitumastic; Sandblast; Bridge; Towers; Steeples; Tanks on Legs	16.77	2.46
Area 2:		
Painters and Tapers	12.25	1.71
Area 3:		
Painters and Tapers	12.37	1.13
Area 4:		
Work within 28 ft. of the surface:		
Spray	11.39	1.54
Painters and Tapers	12.15	1.54
Sand Blasting; Steel	12.10	1.54
Work over 28 ft. in height, or downhole more than 28 feet:		
Painters and Tapers	12.39	1.54
Spray	13.15	1.54
Sand Blasting; Steel	13.10	1.54
PLASTERERS:		
Area 1	15.88	3.20
Area 2	11.64	3.74
PLASTERERS' TENDERS:		
Area 1	13.62	2.52
PLUMBERS:		
Area 1	19.74	6.21
Area 2	15.43	3.82
ROOFERS:		
Area 1	14.56	4.10
Area 2:		
Roofers and Kettlemen	13.80	1.45
Roofers working with coal, tar and pitch products		
Area 3	15.80	1.45
Area 1	12.95	1.55
SHEET METAL WORKERS:		
Area 1	18.76	3.10
Area 2	15.61	1.95
Area 3	15.98	2.40

SOFT FLOOR LAYERS:	Basic Hourly Rates	Fringe Benefits
Area 1	\$11.75	\$1.79
Area 2	13.49	1.29
Area 3	12.37	1.19
SPRINKLER FITTERS	15.84	2.43
TERRAZZO WORKERS and TILE SETTERS:		
Area 1	15.00	1.00
Area 2	15.10	3.05
Area 3	14.19	2.15
Area 4	12.25	1.90
Area 5	14.65	1.50
Area 6	12.65	1.65
IRRIGATION and LANDSCAPE CONSTRUCTION:		
Area 1:		
Painters	8.66	2.50
Plumbers	10.62	2.31
Power Equipment Operators	10.96	2.95
LABORERS:		
Area 1:		
Zone 1 - Building, Heavy and Highway:		
Group 1	13.72	3.12
Group 2	13.97	3.12
Group 3	14.22	3.12
Group 4	14.47	3.12
Zone Differential - Add to Zone 1 Rate for Heavy and Highway ONLY		
Zone 2 - \$1.15		
Zone 3 - 1.60		
Zone 4 - 2.30		
Zone 5 - 2.95		
Area 2:		
Zone 1:		
Group 1	10.70	4.38
Group 2	10.80	4.38
Group 3	10.90	4.38
Group 4	11.00	4.38
Group 5	11.05	4.38
Group 6	11.30	4.38

LABORERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Area 2: Zone 1 (Cont'd)		
Group 7	\$11.55	\$4.38
Group 8	10.85	4.38
Group 9	11.00	4.38
Group 10	11.30	4.28
Zone Differential (add to Zone 1 Rate)		
Zone 2 - \$1.50		
Zone 3 - 1.75		
LINE CONSTRUCTION:		
Area 1: Zone 1:		
Group 1	19.30	2.55+
Group 2	17.44	2.55+
Group 3*	15.74	2.55+
Group 4	15.02	1.85
Group 5	13.13	1.85+
Group 6*	13.13	1.85+
Group 7	12.34	1.85+
Area 2:		
Cable Splicers	17.56	1.20+
Lineman	15.92	1.20+
Line Equipment Mechanic: Right-of-way	15.05	1.20+
Base Shop	14.07	1.20+
Line Equipment Serviceman	14.07	1.20+
Line Equipment Operator	14.31	1.20+
Groundman	11.40	1.20+
AREA 1 - Zone Differential (add to Zone 1 Rate)		
Zone 2 \$2.00		
Zone 3 2.75		
Zone 4 3.50		
Zone 5 4.75		

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
Area 1: Zone 1:		
Group 1	\$13.65	\$4.10
Group 2	13.95	4.10
Group 3	14.50	4.10
Group 4	14.65	4.10
Group 5	14.80	4.10
Group 6	15.05	4.10
Group 7	15.30	4.10
Group 8	16.30	4.10
Zone Differential (add to Zone 1 Rate)		
Zone 2 - \$1.25		
Zone 3 - 1.75		
Zone 4 - 2.50		
Zone 5 - 3.05		
Area 2: Zone 1:		
Group 1	13.11	3.65
Group 2	13.27	3.65
Group 3	13.64	3.65
Group 4	13.95	3.65
Group 5	14.12	3.65
Group 6	14.30	3.65
Group 7	14.66	3.65
Group 8	14.89	3.65
Group 9	15.12	3.65
Group 10	15.36	3.65
Zone Differential (add to Zone 1 Rate):		
Zone 2 - \$1.50		
Zone 3 - 1.75		
TRUCK DRIVERS:		
Area 1: Zone 1:		
Group 1	15.19	3.43
Group 2	15.23	3.43
Group 3	15.29	3.43
Group 4	15.38	3.43
Group 5	15.59	3.43
Group 6	15.63	3.43
Group 7	15.69	3.43
Group 8	15.73	3.43
Group 9	15.84	3.43
Group 10	15.88	3.43
Group 11	16.19	3.43
Group 12	16.33	3.43

Basic Hourly Rates	Fringe Benefits
\$16.49	\$3.43
16.63	3.43
TRUCK DRIVERS: (Cont'd) Area 1 - Zone 1: (Cont'd) Group 13 Group 14 Zone Differential (add to Zone 1 Rate): Zone 2 - \$1.25 Zone 3 - 1.75 Zone 4 - 2.50 Zone 5 - 3.05 Area 2: Group 1 Group 2 Group 3 Group 4 Group 5 Group 6 Group 7 Group 8 Group 9 Group 10 Group 11 Group 12 Group 13: Class A Class B Class C Class D Class E Class F Class G Class H Class I Group 14	
12.49	4.09
12.55	4.09
12.61	4.09
12.67	4.09
12.72	4.09
12.98	4.09
13.04	4.09
13.10	4.09
13.21	4.09
13.27	4.09
13.33	4.09
13.39	4.09
12.87	4.09
13.08	4.09
13.21	4.09
13.39	4.09
13.50	4.09
13.62	4.09
13.90	4.09
14.13	4.09
14.36	4.09
13.78	4.09

Basic Hourly Rates	Fringe Benefits

WELDERS: Receive the rate prescribed for craft performing operation to which welding is incidental

FOOTNOTES:

- a. Employer contributes 8% of basic hourly rate for 5 years' service, 6% of basic hourly rate for 6 months, to 5 years' service as Vacation Pay Credit. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; and Christmas Day.
- b. All Employees who have been employed for a period of one year shall have 2 weeks' vacation with pay, also eight Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Day; and Veterans' Day.

AREA and GROUP DESCRIPTIONS

ASBESTOS WORKERS:

- Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Latah, Lewis, Kootenai, Nez Perce, and Shoshone Counties**
- Area 2: Remaining Counties**

BOILERMAKERS:

- Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
Area 2: Remaining Counties

BRICKLAYERS; STONEMASONS; and MARBLE SETTERS:

- Area 1: Bannock, Bonner, Boundary, Kootenai, and Shoshone Counties
Area 2: Clearwater, Idaho, Latah, Lewis, and Nez Perce Counties
Area 3: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington Counties
Area 4: Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties
Area 5: Bingham County (north of City of Blackfoot); Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, and Teton Counties
Area 6: Bannock and Bear Lake Counties; Bingham County (south of the City of Blackfoot); Caribou, Franklin, Oneida, and Power Counties

CARPENTERS:

- Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties

- Group 1: Carpenters; Lathers
Group 2: Piledrivers; Saw Filer; Stationary Power Woodworking
Tool Operator
Group 3: Boom Men; Carpenters working on burned, charred, crossoled or similarly treated material
Group 4: Piledriver (Crossoled material)
Group 5: Millwrights and Machine Erectors

AREA and GROUP DESCRIPTIONS (Cont'd)

CARPENTERS: (Cont'd)
Area 2: Remaining Counties and Idaho County (south of the 46th Parallel).

Zone 1:

Group 1: Carpenters; Floor Layers; Shinglers; Drywall Applicator; Acoustical material; Lathers
Group 2: Saw Filer; Stationary Machine Operator; Pile-driverman; Bridgeman and Wharf Builders; Automatic Pile Threader
Group 3: Millwrights and Machine Erector; Piledriverman's Boom Man

Zone 2:

Group 1: Carpenters; Floor Layers; Shinglers; Drywall Applicator; Acoustical material; Lathers
Group 2: Saw Filer; Stationary Machine Operator; Pile-driverman; Bridgeman and Wharf Builders; Automatic Pile Threader
Group 3: Millwrights and Machine Erector; Piledriverman's Boom Man

Zone 3:

Group 1: Carpenters; Floor Layers; Shinglers; Drywall Applicator; Acoustical material; Lathers
Group 2: Saw Filer; Stationary Machine Operator; Pile-driverman; Bridgeman and Wharf Builders; Automatic Pile Threader
Group 3: Millwrights and Machine Erector; Piledriverman's Boom Man

CEMENT MASONS:

Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties

Group 1: Rodding, Tamping, Floating, Troweling, Patching, Skinning, Rubbing, Sack Rubbing; All exposed aggregate finishing; Setting of Screeds; Screed Forms, curb and gutter and sidewalk forms; Preparation of all concrete for caulking of the joints and the caulking of expansion joints; Preparation of concrete for the application of hardeners, sealers and curing compounds and their application; Grouting and dry packing of machine base; Removal of Snap Ties and She-bolts prior to patching of concrete

Group 2: Power Troweling Machine Operator; Troweling of magnesite, torganal or material with epoxy bases or oxide chloride base; All power Grinders, Bushing Hammer, Chipping Gun; Gunnite Nozzleman; All Sandblasting for architectural finishes and exposing of aggregate for finish; Concrete sawing and cutting for expansion joints and scoring for decorative pattern; Operating of Clary-type Floats, Longitudinal Floats, Rodding Machines, and Belting Machines; Scarifiers

AREA and GROUP DESCRIPTIONS (Cont'd)

CEMENT MASONS: (Cont'd)

Area 1: (Cont'd)
Group 3: Grinding, Brushing or Chipping of toxic materials or high-density concrete; Operating of power tools on a scaffold

Area 2: Remaining Counties and Idaho County south of the 46th Parallel

Group 1: Cement Mason (including but not limited to hand chipping and patching; All types grouting and painting of all concrete construction; Screed setting including screed pins; Dry packing of all concrete including Embeco; Plugging and filling all voids, etc.; Concrete construction; Waterproofing of concrete with thorseal or similar materials)

Group 2: Cement Mason (magnesite, terrazzo and mastic composition, two component epoxies); Clary and similar type Screed Operator; Jackson Vibrator and similar type Screed Operator; Sandblasting of concrete for architectural finishes only; Power Chipping and Bush-hammer; All color concrete work Power Trowel Operator; Power Grinder Operator; Gunite and Composition floor layer)

ELECTRICIANS:

Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
Area 2: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington Counties
Area 3: Remaining Counties

ELEVATOR CONSTRUCTORS:

Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
Area 2: Remaining Counties, except Adams, Lemhi, Valley, and Washington Counties

GLAZIERS:

Area 1: Benewah and Clearwater Counties; Idaho County (the north part, from a line running east and west through the north limits of Elk City); Latah, Lewis, and Nez Perce Counties
Area 2: Bonner, Boundary, Kootenai, and Shoshone Counties
Area 3: Ada, Adams, Boise, Canyon, Elmore, and Gem Counties; Gooding County (the west part, from a line running north and south through the eastern limits of the City of Bliss); Idaho County (the south part from a line running east and west through the north limits of Elk City); Owyhee, Payette, Valley, and Washington Counties
Area 4: Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, and Fremont Counties; Gooding County (eastern part from a line running north and south through the eastern limits of the City of Bliss); Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton, and Twin Falls Counties

AREA DESCRIPTIONS (Cont'd)

IRONWORKERS:

- Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
- Area 2: The portions of Adams, Valley, and Washington Counties located north of the Weiser-Gibbonsville Line
- Area 3: Remaining Counties and those portions of Adams, Valley and Washington Counties located south of the Weiser-Gibbonsville Line

PAINTERS:

- Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (the north part, from a line running east and west through the north limits of Elk City); Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
- Area 2: Ada, Adams, Boise, and Canyon Counties; Elmore County (except Mt. Home AFB); Gem County; Gooding County (the west part, from a line running north and south through the eastern limits of the City of Bliss); Idaho County (the south part, from a line running east and west through the north limits of Elk City); Owyhee, Payette, Valley, and Washington Counties
- Area 3: Elmore County (Mt. Home AFB)
- Area 4: Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, and Fremont Counties; Gooding County (the east part, from a line running north and south through the eastern limits of the City of Bliss); Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton, and Twin Falls Counties

PLASTERERS:

- Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
- Area 2: Remaining Counties

PLASTERERS' TENDERS:

- Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, Lewis Nez Perce, and Shoshone Counties

PLUMBERS:

- Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, and Lewis Counties; Nez Perce County (north of the 46th Parallel); Shoshone County
- Area 2: Remaining Counties including Idaho and Nez Perce Counties south of the 46th Parallel

AREA DESCRIPTIONS (Cont'd)

ROOFERS:

- Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
- Area 2: Ada and Adams Counties; Blaine County (northern part); Boise, Camas, Canyon, Custer, Elmore, Gem, and Gooding Counties; Idaho County (south of a line running east and west through the City of Grangeville); Jerome, Lemhi, Lincoln, Owyhee, Payette, Valley, Twin Falls, and Washington Counties
- Area 3: Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power, and Teton Counties

SHEET METAL WORKERS:

- Area 1: Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties
- Area 2: Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Idaho, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, Valley, and Washington Counties
- Area 3: Remaining Counties

SOFT FLOOR LAYERS:

- Area 1: Clearwater County; Idaho County (the north part from a line running east and west through the north limits of Elk City); Latah, Lewis, and Nez Perce Counties
- Area 2: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties
- Area 3: Ada, Adams, Boise, Canyon, Elmore, and Gem Counties; Gooding County (the west part, from a line running north and south through the eastern limits of the City of Bliss); Idaho County (the south part, from a line running east and west through the north limits of Elk City); Owyhee, Payette, Valley, and Washington Counties

TERRAZZO WORKERS and TILE SETTERS:

- Area 1: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties
- Area 2: Clearwater, Idaho, Latah, Lewis, and Nez Perce Counties
- Area 3: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington Counties
- Area 4: Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties
- Area 5: Bingham County (north of the City of Blackfoot); Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, and Teton Counties
- Area 6: Bannock and Bear Lake Counties; Bingham County (south of the City of Blackfoot); Caribou, Franklin, Oneida, and Power Counties

IRRIGATION and LANDSCAPE CONSTRUCTION:

- Area 1: Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties

LABORERS (AREA 1)

Benevah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties

Building, Heavy and Highway Construction

Group 1: Brush Hog Feeder; Carpenter Tender; Cement Handler; Concrete Crewman (includes stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, Pumpcrete Machine, Signaling, handling the Nozzle of Squeezcrete or similar machine - 6 inches and smaller); Concrete Signalman; Crusher Feeder; Demolition (includes clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector (includes guard rails, guide and reference posts, sign posts and right-of-way markers); Form Cleaning Machine Feeder; Stack; General Laborer; Grout Machine Header Tender; Bullgang; Concrete Crewman, Dumpman and Pumpcrete Crewman, including distributing pipe, assembly and dismantling, and Nipper; Riprap Man; Sandblast railhouse; Scaffolding Erector, wood or steel; Scaleman; Stake Jumper; Structural mover (includes separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Truck Loader; Well-point Man; Window Cleaner

Group 2: Asphalt Raker; Asphalt Roller, walking; Cement Finisher Tender; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Driller Tender (when required to move and position machine); Form Setter, Paving; Grade Checker using level; Jackhammer Operator; Brakeman, Finisher, Vibrator and Form Setter; Nozzleman (includes squeeze and flow-crete nozzle); Nozzleman, water, air or steam; Pavement Breaker, under 90 lbs.; Pipelayer, corrugated metal culvert; Pipelayer, multi-section; Pot Tender; Powderman Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Rodder and Spreader; Tamper (includes operation of Barco, Essex and similar tampers); Trencher, Shawnee; Tugger Operator; Wagon Drills; Water Pipe Liner; Wheelbarrow, power-driven

Group 3: Air Track Drill; Brush Machine (includes horizontal construction joint clean-up brush machine, power-propelled); Caisson Worker, free air; Chain Saw Operator and Faller; Concrete Stack (includes laborers when working on free-standing concrete stacks for smoke or fume control above 40 ft. high); Gunite (includes operation of machine and nozzle); High Scaler; Hod Carrier; Laser Beam Operator (includes Grade Checkers and Elevation control); Miner, Nozzleman for concrete, and Laser Beam Operator on tunnels; Monitor Operator, air track or similar mounting; Mortar Mixer; Nozzleman (includes Jet Blasting Nozzleman, over 1200 lbs.; Jet Blast Machine, power-propelled, Sandblast Nozzle); Pavement Breaker, 90-lbs. and over; Pipelayer (includes working Topman, Caulker, Collarman, Joints, Mortarman, Rigger, Jacker, Shorer, Valve or Meter Installer, Ramper); Pipewrapper; Vibrators, all

Group 4: Drills with dual masts; Raise and Shaft Miner, Laser Beam Operator on raises and shafts; Powderman (receives, \$0.25 additional per hour); Welder, electric, manual or automatic

LABORERS (AREA 2)

Remaining Counties and Idaho County (south of the 46th Parallel)

Group 1: General Laborers; Sloper, clearing and grading; Form Stripper; Concrete Crew; Concrete Curing Crew; Carpenter Tender; Asphalt Laborer; Hopper Tender; Heater Tender; Stake Jumper; Choker Setter; Spreader and Weighman; Power Wheelbarrow; Scouring Concrete; Rip Rap Man (hand placed); Fence Erector and Installer, manual or mechanical (includes the installation and erection of fences, guard rails, median rails, reference posts, guide posts and right-of-way markers); Crusher Tender; Cribbing and Shoring (in open ditches); Machinery and Parts Cleaner; Leverman, manual or mechanical; Demolition, salvage; Landscaper; Tool Room Man

Group 2: Chuck Tender; Driller Tender; Air Tampers; Gunite Nozzleman Tender; Pipewrapper; Tar Pot Tender; Concrete Sawyer; Signalman, handling cement; Dumpman; Steam Nozzleman; Air and water Nozzleman (Green Cutter, concrete); Vibrator (less than 4"); Pumpcrete and Grout Pump Crew; Hydraulic Monitor

Group 3: Pipelayer, including sewer, drainage, sprinkler systems and water lines; Free Air Caisson; Jackhammer; Paving Breaker; Powderman Tender; Asphalt Raker; Gasoline powered Tamper; Electric Ballast Tamper; Sand Blasting; Form Setter, airport paving; Gunman (Gunite); Manhole Setter; Hand guided machines, such as Roto Tillers, Trenchers, Post Hole Diggers, Walking Garden Tractors, etc.; Form Setter (highway, curb and gutter); Vibrator (4" and over); Timber Faller and Bucker; Metal Pan Installer

Group 4: Hod Carrier; Mason Tender; Plaster Tender; Mason Tender (concrete); Terrazzo-tile Tender

Group 5: Highscaler; Wagon Drill; Grade Checker; Gunnite Nozzleman

Group 6: Diamond Drills; Drillers on Drills with Manufacturers' rating 3" or over

Group 7: Powderman

UNDERGROUND WORK

Group 8: Reboundman; Chucktender; Nipper; Dumpman; Vibrator (less than 4"); Brakeman; Mucker; Bullgang

Group 9: Form Setter and Mover

Group 10: Miners; Machinemen; Timbermen; Steelmen; Drill Doctors; Spaders and Tuggers; Spilling and/or Caisson Workers; Vibrator (over 4")

LINE CONSTRUCTION (AREA 1)
Benevah, Bonner, Boundary, Clearwater, Idaho, Kootenai,
Latah, Lewis, Nez Perce, and Shoshone Counties

- Group 1: Cable Splicer, Leadman Pole Sprayer
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man,
Certified Lineman Welder
Group 3: Tree Trimmer
Group 4: Line Equipment Man
Group 5: Head Groundman, Powderman, Jackhammer Man
Group 6: Head Groundman (Chipper)
Group 7: Groundman

*GROUPS 3 and 6 receive ZONE 1 RATE ONLY (No Zone Differential)

ZONE DEFINITIONS

- ZONE 1: 0 to 3 miles radius from the geographical center of
the Cities listed below
ZONE 2: 3 to 20 miles radius
ZONE 3: 20 to 35 miles radius
ZONE 4: 35 to 50 miles radius
ZONE 5: Over 50 miles radius

ZONE 1 rate is paid when working out of employer's permanent shop

BASE POINTS

Coeur D'Alene	Kellog	Lewiston
Orofino	Sand Point	Spokane

POWER EQUIPMENT OPERATORS (AREA 1)
Benevah, Bonner, Boundary, and Clearwater Counties; Idaho
County (north of the 46th Parallel); Kootenai, Latah, Lewis,
Nez Perce, and Shoshone Counties

Group 1: Bit Grinders; Bolt Threading Machine; Compressors (under 2,000 CFM, gas, diesel or electric power); Crusher Feeder (mechanical); Deckhand; Driller's Tender; Fireman and Heater Tender; Grade Checker; Tender, Mechanic or Welder, H.D.; Hydro-seeder, Mulcher, Nozzleman; Oiler; Oiler and Cable Tender; Mucking Machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar or compacting vibrator) except when pulled by Dozer with operable blade; Steam Cleaner; Welding Machine

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator, Fireman or Pugmizer (asphalt); Bagley or stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2,000 CFM or over, 2 or more, gas, diesel or electric power); Concrete Saw (multiple cut); Distributor Leverman; Elevator Hoisting Materials; Dope Pots (power actuated); Fork Lift or Lumber Stacker, Hydra-lift and similar; Gin Trucks (pipeline); Hoist, single drum; Loader (Bucket Elevators and Conveyors); Longitudinal Float; Mixer (portable, concrete); Pavement Breaker (Hydra-hammer and similar); Power Broom; Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross and similar on construction job only); Tractor (farm type R/T with attachments, except Backhoe); Tugger Operator

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland and similar); Batch Plant and Wet Mix Operator, single unit (concrete); Belt-crete Conveyors with power pack or similar; Belt Loader (local or similar); Bending Machine; Boring Machine (earth); Boring Machine (rock under 8" bit); Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning and Doping Machine (pipeline); Deck Engineer; Elevating Belt-type Loader (Euclid, Barber Greene or similar); Elevating Grader type Loader (Dunor, Adams or similar); Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Mixermobile; Mucking Machine; Post Hole Auger or Punch; Pump (Grout or Jet); Soil Stabilizer (P & H or similar); Spreader Machine; Tractor (to D-6 or equivalent and Tracavator); Traverse Finishing Machine; Turnhead Operator

Group 4: Blade Operator (Motor Patrol and attachments); Concrete Pumps (squeeze-crete, Flow-crete, Pump-crete, Whitman and similar); Drills (Churn, Core, Calyx or Diamond); Equipment Serviceman, greaser and oiler; Hoist (2 or more drums or tower hoist); Loaders (asphalt or Front End, under 4 yds. R/T); Pave or Curb Extruders (asphalt or concrete); Refrigeration Plant Engineers (under 1,000 tons); Rubber-tired Skidders (R/T with or without attachments); Screed Operator; Surface Heater and Planer Machine; Trenching Machines (under 7 ft. Depth capacity); Turnhead (with re-screening); Vacuum Drill (Reverse Circulation Drill, under 8 in. bit)

POWER EQUIPMENT OPERATORS (AREA 1) (Cont'd)

Benewah, Bonner, Boundary, and Clearwater Counties; Idaho County (north of the 46th Parallel); Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties

Group 5: Backhoe (under 1 yd.); Cranes (25 tons and over); Derricks and Stifflegs (under 65 tons); Drilling equipment (8 inch bit and over) (Robbins, Reverse Circulation and similar); Hoe Ram; Pile-driving Engineers; Paving (dual drum); Railroad Track Limer Operator (self-propelled); Refrigeration Plant Engineer (1,000 tons and over); Signaller (Whirlies, Highline, Hammerheads or similar)

Group 6: Asphalt Plant Operator; Automatic Sub-grader (Ditches and Trimmers) (Auto-grade, ABC, R.A. Hansen and similar on grade wire); Backhoes (1 yd. to 3 yds.); Batch Plant (over 4 units); Batch and Wet Mix Operator (multiple units, 2 and including 4); Blade (finish and bluestop) (Automatic, CMI, ABC and similar when used as automatic); Boat Operator; Boom Cats (side); Cableway Controller (dispatcher); Clamshell Operator (under 3 yds.); Concrete Slip Form Paver; Cranes (over 25 tons, including 45 tons); Crusher, Grizzly and Screening Plant Operator; Draglines (under 3 yds.); Drill Doctor; H.D. Mechanic; H.D. Welder; Loader Operator (Front-end and Overhead, 4 yds. including 8 yds.); Multiple-Dozer units with single blade; Quad-track or similar equipment; Roller (finishing pavement); Rubber-tired Scrapers (one motor with one scraper, under 40 yds.); Rubber-tired Scrapers, multi-engine power with one scraper (Euclid, TS 24 and similar); Rubber-tired Scraper, one motor with one scraper (40 yds. and over); Rubber-tired Scraper, multiple-engine power with one scraper (Euclid, TS 24 and similar); Push Pul or Help Mate in use; Rubber-tired Scraper, multiple engines with two scrapers; Shovels (under 3 yds.); Tractors (D-6 and equivalent and over); Trenching Machines (7 ft. depth and over)

Group 7: Backhoe (3 yds. and over); Cableway Operators; Clamshell Operator (3 yds. and over); Cranes (over 45 tons, to 85 tons); Derricks and Stifflegs (65 tons and over); Draglines (3 yds. and over); Elevating Belt (Holland type); Loader (360 degrees revolving Koehring Scooper or similar); Loaders (Overhead and Front-end, over 8 yds. to 10 yds.); Rubber-tired Scrapers (multiple engine with three or more scrapers); Shovels (3 yards and over); Whirlies and Hammerheads, all

Group 8: Cranes (85 tons and over, and all climbing, rail and tower); Loaders (Overhead and Front-end, 10 yds. and over); Helicopter Pilot

POWER EQUIPMENT OPERATORS (AREA 2)

Remaining Counties and Idaho County (south of the 46th Parallel)

Group 1: Brakemen; Crusher Plant Feeder (mechanical); Deckhand; Drill Tenders; Grade Checkers; Heater Tender; Land Plane; Pumpman

Group 2: Air Compressor; Asphalt Refrigeration Plant Operator; Ball Boy; Bit Grinder; Blower Operator (cement); Bolt Threader Machine Operator; Broom; Cement Hog; Concrete Mixer; Concrete Saw, multiple cut; Discing - harrowing or mulching (regardless of motive power); Distributor Leverman; Drill Steel Threader machine Operator; Fireman - all; Heavy Duty Mechanic Tender or Welder Tender; Hoist - single drum; Hydraulic Monitor Operator, Skid-mounted; Oiler (single piece of equipment); Pugmill, Box or Screed Operator; Spray Curing Machine; Tractor, rubber-tired farm-type using attachments

Group 3: A-Frame Truck (Hydra Lift, Swedish Cranes, Ross Carrier, Hyster on construction jobs); Battery Tunnel Locomotive; Belt Finishing Machine; Cable Tenders (underground); Chip Spreader Machine (self-propelled); Hoist, 2 or more drums or Tower Hoist; Hydraulic Fork Lift and similar (when hoisting); Oiler (underground); Power Loader (Bucket Elevator, Conveyors); Road Roller (regardless of motive power)

Group 4: Boring Machine (earth or rock) (Quarry Master, Joy) (tractor mounted); Drills: Churn, Core, Carya or diamond; Front End and Overhead Loaders and similar Machines (up to and including 4 yds.) (rubber-tired); Grout Pump; Hydra-Hammer; Locomotive Engineer; Longitudinal Float Machine; Mixer-Mobile; Spreader Machine; Tractor, rubber-tired, using Backhoe; Transverse Finishing Machine, Trenching Machine, Waggoner Compactor and similar; Asphalt Spreaders

Group 5: Concrete Plant Operator; Concrete Road Paver (dual); Elevating Grader Operator; Euclid Elevating Loader; Generator Plant Operator, mechanic (diesel, electric); Post Hole Auger or Punch Operator; Power Shovels and Draglines, under 1 yd.; Pumpcrete; Refrigeration Plant Operator; Road Roller (finishing high-type pavement); Service Oiler; Skidder, rubber-tired; Sub-grader; Multiple Station Beltline Operator (Teton Dam Project only)

Group 6: Asphalt Pavers, self-propelled; Asphalt Plant Operator; Blade Operator (motor patrol); Concrete Slip Form Paver; Cranes, up to and including 50 tons; Crusher Plant Operator; Derrick Operator; Drilling Equipment (Bit under 8 inches) (Robbins Reverse Circulation and similar); Front End and Overhead Loaders and similar Machines (over 4 yds. to and including 7 yds.); Koehring Scooper; Heavy Duty Mechanic or Welder; Mucking Machine (underground); Multi-batch Concrete Plant Operator; Piledriver Engineer; Power Shovels and Draglines (1 yd. to and including 3 1/2 yds.); Tractor, Crawler type, including all attachments; Refrigeration Plant Operator (over 1,000 tons); Trimmer Machine Operator; Tournapulls, Euclid and similar, to and including 40 yards

POWER EQUIPMENT OPERATORS (AREA 2) (Cont'd)
 Remaining Counties and Idaho County (south of the 46th Parallel);

Group 7: Cableway Operator; Continuous Excavator (Barber Greene M-50); Cranes, over 50 tons; Dredges; Drilling Equipment (Bit 8 inches and over) (Robbins Reverse Circulation and similar); Fine Grader, CMI or equivalent; Front End and Overhead Loaders and similar Machines (over 7 yds.); Power Shovels and Draglines (over 3 1/4 yds.); Quad type Tractors with all attachments; Tournapulls, Euclid and similar, over 40 yds. to and including 50 yds.; Multiple Scraper Units; Tower Crane Operator

Group 8: Tournapulls, Euclid and similar, over 50 yards to and including 75 yards

Group 9: Tournapulls, Euclid and similar, over 75 yards to and including 100 yards

Group 10: Tournapulls, Euclid and similar, over 100 yards

TRUCK DRIVERS (AREA 1)

Benevah, Bonner, Boundary, and Clearwater Counties;
 Idaho County (north of the 46th Parallel); Kootenai,
 Latah, Lewis, Nez Perce, and Shoshone Counties

Group 1: Flat Bed Truck, single rear axle; Fork Lift, 3,000 lbs. and under; Swamper; Leveeperson loading trucks at bunkers; Pickup hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber-tired pulling Trailer or similar equipment); Water Tank Truck, 1,800 gallons and under

Group 2: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material; Titeperson No. 1

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power operated Sweeper; Semi-trailer, Low Bed, Truck and Trailer; Straddle Carrier (Ross, Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yards and under); Trucks, side, end and bottom dump (under 6 yards); Water Tank Truck (1,801 to 4,000 gallons)

Group 4: Auto Crane - 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yards and under); Flaherty Spreader, Box Driver, Flat Bed Truck (using power take off); Fork Lift (over 3,000 lbs.); Oil Distributor Driver (road, Bootperson, Leveeperson Tender); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks hauling concrete (over 3 yards to 6 yards); Water Tank Truck (4,001 to 6,000 gallons); Wrecker and Tow Trucks

TRUCK DRIVERS (AREA 1) (Cont'd)
 Benevah, Bonner, Boundary, and Clearwater Counties;
 Idaho County (north of the 46th Parallel); Kootenai,
 Latah, Lewis, Nez Perce, and Shoshone Counties

Group 5: Burner, Cutter and Welder; Oil Distributor Driver (road, Bootperson, Leveeperson); Service Greaser; Titeperson No. 2; Trucks, side, end and bottom dump (over 6 yards to 12 yards)

Group 6: A-Frame; Water Tank Truck (6,001 to 8,000 gallons)

Group 7: Dumptor (over 6 yards); Semi-truck and Trailer, 50 tons and under Lowboy; Transit Mixers and Trucks hauling concrete (6 yards to and including 10 yards); Truck, side, end and bottom dump (over 12 yards to and including 20 yards)

Group 8: Low Boy (over 50 tons); Tractor with steer trailer; Truck-mounted Crane (with load-bearing surface, either mounted or pulled); Water Tank Truck (8,001 to 10,000 gallons)

Group 9: Flaherty Spreader Box Driver; Plowboys; Fork Lift, 16,000 lbs. and over; Semi-end Dumps; Transit Mixers and Trucks hauling concrete (over 10 yards to and including 15 yards); Trucks, side, end, and bottom dump (over 20 yards to and including 30 yards); Water Tank Trucks (10,001 to 12,000 gallons)

Group 10: Mechanic, field

Group 11: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, whichever is greater; Transit Mixers and Trucks hauling concrete (over 15 yards to and including 20 yards); Trucks, side, end and bottom dump (over 30 yards to and including 40 yards); Water Tank Trucks (12,001 to 14,000 gallons)

Group 12: Transit Mixers and Trucks hauling concrete (over 20 yards); Trucks, side, end bottom dump (over 40 yards to and including 50 yards)

Group 13: Trucks, side, end and bottom dump (over 50 yards to and including 100 yards)

Group 14: Trucks, side, end and bottom dump (over 100 yards); Helicopter Pilot hauling employees or material

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TRUCK DRIVERS (AREA 2)

Remaining Counties and Idaho County (south of the 46th Parallel)

Group 1: Leverman loading at bunkers; Pilot Car or Escort Driver
 Group 2: Flat Bed, 2 axle and Pickup hauling materials; Water
 Tank Truck (1,800 gallons and under); Fork Lift (3,000 and
 under

Group 3: Flat Bed, 3 axle; Fuel Truck (1,000 gallons and under);
 Greaser; Fireman; Serviceman; Buggy; Man Haul (Shuttle
 truck or bus)

Group 4: Transit Mix Truck, 3 yards and under; Truck Tenders;
 Slurry or concrete pumping truck

Group 5: Flat Bed using power takeoff; Water Tank Truck (over
 1,800 to 4,000 gallons); Semi-trailer, Low Boy, up to 96,000
 lbs. GVW; Bulk Cement Tanker, up to 96,000 lbs. GVW; Fork Lift,
 over 3,000 lbs. (Bull Lift, Hydro Lift); Ross Hyster and similar
 straddle equipment; "A" Frame Truck (Swedish Crane, Iowa 3,000,
 Hydro-lift)

Group 6: Transit Mix Truck, over 3 yards to 6 yards

Group 7: Water Tank Truck, over 4,000 gallons; Fuel Truck,
 over 1,000 gallons

Group 8: Transit Mix Truck, over 6 yards to 8 yards; Dumpsters

Group 9: Distributor or Spreader Truck; Fuel Fireman, Service-
 man; Snow Plow (truck mounted); Transit Mix Truck, over 8 yards
 to 10 yards

Group 10: Low Boy, 96,000 lbs. GVW and over; Bulk Cement Tanker,
 96,000 lbs. GVW and over

Group 11: Transit Mix Truck, over 10 yards

Group 12: Turnarocker and similar equipment

Group 13: Truck, side, end and bottom dump:

- Class A: 6 yards and under
- Class B: Over 6 yards - including 14 yards
- Class C: Over 14 yards - including 20 yards
- Class D: Over 20 yards - including 30 yards
- Class E: Over 30 yards - including 40 yards
- Class F: Over 40 yards - including 50 yards
- Class G: Over 50 yards - including 75 yards
- Class H: Over 75 yards - including 100 yards
- Class I: Over 100 yards

Group 14: Truck Mechanics

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ZONE DESCRIPTIONS
 for CEMENT MASONS, LABORERS (Heavy
 and Highway Construction), POWER
 EQUIPMENT OPERATORS, and TRUCK DRIVERS

AREA 1

- Zone 1: Area within a 15 mile radius from the center of the
 Cities listed below
- Zone 2: Area within 15-30 mile radius from the center of the
 Cities listed below
- Zone 3: Area within 30-45 mile radius from the center of the
 Cities listed below
- Zone 4: Area within 45-90 mile radius from the center of the
 Cities listed below
- Zone 5: Area over 90 mile radius from the center of Cities
 listed below

Spokane

Coeur d'Alene

Lewiston

ZONE DESCRIPTIONS
 FOR CARPENTERS, CEMENT MASONS,
 LABORERS, POWER EQUIPMENT OPERATORS
 and TRUCK DRIVERS

AREA 2

- ZONE 1: That area within the State of Idaho located within 20
 miles on either side of I-84 from the Oregon-Idaho State Line
 on the west to the intersection of I-84 and I-86 in Cassia
 County, then following I-86 to Pocatello, then following I-15
 north of Idaho Falls, then following State Highway #191 north
 to the intersection with Moody Road (approximately 2 miles north
 of the City of Rexburg, Idaho); then following I-15 south from
 the City of Pocatello to a point approximately 1 mile south of
 the City of Downey, Idaho, which point is located by extending
 the northerly boundary of Franklin County to the west
- ZONE 2: That area within the State of Idaho located over 20 miles
 and within 50 miles on either side of I-84 from the Oregon-Idaho
 State Line on the west to the intersection of I-84 and I-86 in
 Cassia County, then following I-86 to Pocatello, then following
 I-15 north to Idaho Falls, then following State Highway #191 north
 to the intersection with Moody Road (approximately 2 miles north
 of the City of Rexburg, Idaho); then following I-15 south from the
 northerly boundary of Franklin County to the west
- Zone 3: The remaining area of that portion of the State of Idaho
 south of Parallel 46 (the Washington-Oregon State Line extended
 eastward to Montana) that is not included in Zone 1 or Zone 2 as
 described above.

Unlisted classifications needed for work not included within the
 scope of the classifications listed may be added after award only
 as provided in the labor standards contract clauses (29 CFR, 5.5(a)
 (1) (ii))

SUPERSEDES DECISION

DECISION NO. N881-2064

PAGE 2

STATE: MINNESOTA
 COUNTY: ANOKA, CARVER, DAKOTA, HENNEPIN, RAMSEY, SCOTT, & WASHINGTON
 COUNTY: *SEE BELOW
 DATE: Date of Publication
 SUPERSEDES DECISION NO. N881-2044 dated July 17, 1981 in 46 FR 37177
 DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

*COUNTIES: ANOKA, CARVER, DAKOTA, HENNEPIN, RAMSEY, SCOTT, & WASHINGTON

Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS \$17.08	\$3.00
BRICKLAYERS 14.97	2.575
CARPENTERS; Millwrights; & Piledrivers 13.53	2.19
Commercial Building: Carpenters & Piledrivers 14.51	3.10
Millwrights 15.01	3.12
Residential Carpenters 12.81	3.10
Site Preparation, Excavation & Incidental Paving: Carpenters & Piledrivers 15.56	2.05
CEMENT MASONS: Building 15.43	1.87
Site Preparation, Excavation & Incidental Paving 15.43	1.82
ELECTRICIANS: Anoka (Anoka & Fridley Type.), Carver, Hennepin, & Scott Cos. 16.50	4.41
Commercial Building: Electricians 17.00	4.55
Cable Splicers 14.19	2.87
Residential Anoka (Exclu. Anoka & Fridley Type.) & Remaining Cos. 15.75	3.70
Commercial Building: Electricians 16.35	3.77
Cable Splicers 13.75	2.61
Residential ELEVATOR CONSTRUCTORS: Mechanic 16.43	2.465
Helpers 702LR	2.465
Glaziers 15.80	1.31
IRONWORKERS 16.05	2.59
LATHERS: Anoka, Carver, Hennepin & Scott Cos. 15.05	2.61
Remaining Cos. 12.49	1.21
MARBLE SETTERS 15.45	1.79
MARBLE SETTERS' FINISHERS 11.40	1.12
PAINTERS: Dakota, Ramsey & Washington Cos. 15.12	\$1.82
Brush; Drywall Finishers; & Sandblaster; Spray; & Drywall Sander 15.82	1.82
Remaining Cos.: Brush; Roller; & Wallpaper 11.34	1.82
Sandblaster; Spray; Structural Steel; & Tapers 15.06	1.93
Sanders 15.76	1.93
PIPEFITTERS; Plumbers; & Steamfitters: Dakota, Ramsey & Washington Cos. 11.82	1.93
Plumbers 16.52	3.44
Pipefitters; Steamfitters 16.52	3.43
Remaining Cos.: Plumbers 16.35	5.59
PIPEFITTERS; Steamfitters 16.24	3.56
PLASTERERS: Dakota, Ramsey, & Washington Cos. 14.05	3.72
Remaining Cos. 14.90	2.87
ROOFERS 15.28	2.18
SHEET METAL WORKERS: Anoka, Dakota, Ramsey & Washington Cos. 17.69	2.27
Remaining Cos. 17.81	2.20
SOFT FLOOR LAYERS: Anoka, Carver, Dakota, Hennepin, Ramsey, & Washington Cos. 14.53	2.77
SPRINKLER FITTERS: Carver Co. 16.47	2.83
Remaining Cos. 16.88	3.23
TERRAZZO WORKERS 16.50	.59
TERRAZZO WORKERS' FINISHERS 15.85	.65
TILE SETTERS 15.40	1.72
TILE SETTERS' FINISHERS 13.50	1.37
LABORERS (Excluding Residential of 4 units or less): Landscape & Sodlayers 6.80	1.00

Basic Hourly Rates	Fringe Benefits
LABORERS: Building Construction: Class 1 \$12.55	\$2.25
Class 2 12.70	2.25
Class 3 12.95	2.25
Class 4 13.25	2.25
Site Preparation, Excavation & Incidental Paving: Class 1 12.35	2.25
Class 2 12.50	2.25
Class 3 12.55	2.25
Class 4 12.70	2.25
Class 5 12.80	2.25
Class 6 13.05	2.25
POWER EQUIPMENT OPERATORS: Building Construction: Class 1 17.57	1.90
Class 2 17.26	1.90
Class 3 16.52	1.90
Class 4 15.96	1.90
Class 5 15.65	1.90
Class 6 15.50	1.90
Class 7 14.26	1.90
Class 8 13.22	1.90
Class 9 12.70	1.90
Site Preparation, Excavation & Incidental Paving: Class 1 15.85	1.90
Class 2 15.35	1.90
Class 3 15.18	1.90
Class 4 15.07	1.90
Class 5 13.11	1.90
Class 6 12.40	1.90

Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS: Building Construction: Group 1: Boom Truck Op. \$13.45	\$1.95
Group 2: Ready-Mix; & Tractor Trailer 13.10	1.95
Group 3: Fork Lift Op.; Mechanic; & Tandem or 3 Axle 12.95	1.95
Group 4: Dumpman; Farm Tractor; & Single or 2 Axle 12.45	1.95
Site Preparation, Excavation & Incidental Paving: Group 1 10.90	1.30
Group 2 10.45	1.30
Group 3 10.35	1.30
Group 4 10.15	1.30

LABORERS CLASSIFICATIONS:

Building Construction:
 CLASS 1: General; Carpenter Tender; Concrete; Damp Proofer below grade; Drill Runner Tender; Dumpmen - dirt, asphalt, concrete, cement; Heater Tender; Hot Tar Caulker - corker; Joist Handler; Material Handler - all types Power Buggy; Rebar; Snow Blower Operator; & Tool Crib Checker
 CLASS 2: Chain Saw Operator; Concrete Saw, Drill Operator; Concrete Vibrator; Demolition & Wrecking excluding remodeling; Mason Tender; Mortar Mixer - cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools, Jackhammer, Paving Buster, Chipping Hammer, Tamper Operator, etc.; Swing Stage Line Scaffold (not including "patent" scaffolding); & Torchman - gas, electric, thermal or similar device
 CLASS 3: Caisson Work; Nozzle Operator - Gunite, Cement, Sandblasting; Pipelayer; Refractory Worker; Sheet Metal Setter & Drivers, Heavy Building Excavation; Underground Work - open ditch or excavation 8' below grade; & Underpinning
 CLASS 4: Driller for Blasting purposes; Dynamite Blasters or substitute products Torex TR, water, gas, gel, briquet, & incidental Paving, etc.
 CLASS 5: Site Preparation, Excavation & Incidental Paving:
 CLASS 1: Unskilled; Bituminous Batcherman (Stationary plant); Blacksmith Tenders; Cement Concrete Batch Truck; Cement Handler - Bulk, Bag; Carpenter Tender; Concrete Batcherman; Concrete Handler, Caisson, Footings, Columns, Piling, Slabs, etc.; Concrete Shovelers, Tamper & Puddler (paving); Concrete Longitudinal Floatman (manual bullfloat on paving); Damp Proofer below grade; Drill Runner Tender; Dumpman (dirt, paver, dumping batchtrucks, etc.); Hydrant & Valve Setter; Joint Filler (concrete pavement); Kettleman (bituminous or lead); Labor Wrecking Demolition; Landscape Gardener, sod, etc.; Pipe Derrickman (tripod, manual); Pipe Handler; Power Buggy Operator; Powder Monkey; Reinforced Steel Laborer; Reinforced Steel Setter (paving); Service Connection Maker (water, gas); Squeezeman; Stabilizing Batcherman (stationary plant); Temporary Heater & Blower Tender; Tool Crib Checker; Top Man (sewer, water or gas trench); Winch Handler (manual)
 CLASS 2: Bituminous Worker - Shovelers, Raker, Floster, Squeegee, Utility; Brick Tender; Compaction Equipment (hand operated); Conduit Layer; Curb Setter; Mortar Mixer; Sand Cushion Bedmaker; Torchman - gas, electric, thermal or similar device
 CLASS 3: Chain Saw; Concrete Drilling; Concrete Mixer Operator; Concrete Saver; Concrete Vibrator; Ditch & other work more than 8 ft. below starting level of manual work; Formssetter; Joint Saver, Mortar; Pneumatic Tools, Jackhammer, Paving Buster, Chipping Hammer, etc.; Stone Tender; & Mason Tender
 CLASS 4: Bottom Man (sewer, water or gas trench) (more than 8 ft. below starting level of manual work); Brick or Block Paving Setter; Caisson Work; Cofferdam Work; Tunnel Laborer; Underground Laborer; & Underpinning
 CLASS 5: Cement Gun Operator (14" or over); Driller - Air Track or similar; Nozzelman (gunite, sandblasting, cement); & Pipelayer, Laser Beam (sewer, water, gas)
 CLASS 6: Blaster Powder Man (dynamite or substitute products); Tunnel Miner (atmospheric); & Tunnel Miner Tender

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

Building Construction:
 CLASS 1 - Helicopter Operator; Truck & Crawler Cranes with 300' of Boom and over, including jib; Tower Crane 300' & over
 CLASS 2 - Truck & Crawler Crane w/200' of Boom, up to and not including 300' of Boom, including jib; Tower Crane 250' & over
 CLASS 3 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib; Tower Crane 200' & over
 CLASS 4 - Traveling Tower Crane; Master Mechanic; Pile Driving Operator; Tower Crane 150' & over
 CLASS 5 - Truck & Crawler Cranes up to & not including 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (inside Building Perimeter); Tower Cranes - Stationary 100' & over; Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License.
 CLASS 6 - Air Compressor Operator, 450 CFM or over, Pump Operator and/or Conveyor Operator (2 or more machines); Hoist Engineer (2 drum); Mechanic or Welder; Pumpcrete or Compaco-type Machine Operator; Forklift; Boom Truck Operator; Concrete Mixer Op.; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer or Building Construction; Front End Loader Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator
 CLASS 7 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.
 CLASS 8 - Air Compressor Operator, 450 CFM or over, Pump and/or Conveyor Operator; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oilier; Welding Machine Operator
 CLASS 9 - Mechanical Space Heater (temporary heat); Oilier or Greaser; Elevator Operator
 Site Preparation, Excavation & Incidental Paving:
 CLASS 1: Helicopter Pilot; Crane with over 135' Boom, excluding jib; Dragline and/or other similar equipment with Shovel-type controls 3 cu. yds. & over Mfg. rated cap.; Pile Driving when 3 Drums are in use
 CLASS 2: Cableway; Concrete Mixer, Stationary Plant over 142; Derrick (Guy or Stiffleg) (Power) (Skids or stationary); Dragline and/or similar equipment with Shovel-type controls, up to 3 cu. yds. Mfg. rated cap.; Dredge or Engineers, Dredge (power) & Engineer; Front End Loader, 5 cu. yds. & over; Grader or Motor Patrol, Finishing Earthwork & Bituminous; Locomotive Crane; Master Mechanic; Mixer (Paving) Concrete Paving, Road, Mole, inclu. Power Supply; Mucking Machine, inclu. Mucking Operations, Convey or similar type; Piledriving; Refrigeration Plant Engineer; Tandem Scraper; Tractor - Boom type; Truck Crane - Crawler Crane, & Tugboat - 100 HP & over
 CLASS 3: Dual Tractor; Elevating Grader; Pumpcrete; Scraper - Struck Cap. 32 cu. yds. & over; Self-propelled Traveling Soil Stabilizer

SUPERSEDES DECISION

STATE: MINNESOTA
COUNTIES: *SEE BELOW
DATE: Date of Publication
N81-2045 dated July 17, 1981 in 46 FR 37170 and
Supersedes Decision Nos.: N81-2048 dated July 17, 1981 in 46 FR 37174
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects
BRIEF FACTS: EARTHQUAKE, MONITORING, & OILMISTED

[illegible]

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PRECISION NO. W82-2064

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (CONT'D):

CLASS 4: Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant; Automatic Road Machine (OCT or similar); Backfiller; Batch Plant (Concrete); Bituminous Spreader & similar types; (Power); Boom Truck (Power operated Boom); Cat Tractors with Rock Wagons or similar types; Chip Harvester & Tree Cutter over 150 HP; Concrete Mixer on Jobsite over 145; Concrete Mobile; Crushing Plant (gravel & stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Dope Machine (Pipeline); Drill Rigs, Heavy Rotary or Churn or Cable Drill; Fork Lift or Straddle Carrier; Fork Lift or Lumber Stacker; Front End Loader, over 1 cu. yd.; Hoist Engineer (power); Lancherman (Tankman or Pilot License); Lead Greaser; Locomotive; Mechanic or Welder; Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps; Paving Breaker or Tamping Machine (Power Driven) Mighty Mite or similar type; Paving Milling Machine; Pickup Sweeper, 1 cu. yd. & over; Hopper cap.; Pipeline Wrapping, Cleaning or Bending Machine; Power Plant Engineer, 100 K.W.H. & over; Power Actuated Horizontal Boring Machine, over 6", Pugmill; Roller, 8 tons & over; Rubber-tired Farm Tractor, Backhoe Attach.; Sheep Foot Rollers; Slip Form (Power Driven) (paving); Tie Tamper & Ballast Machine; Tractor, over D2, TD6 or similar HP with Power Take-off; Tractor, over 50 HP without Power Take-off; Trenching Machine (sewer, water, gas); Turnpull (or similar type); Well Point Installation, Dismantling or Repair Mechanic; Hydraulic Tree Planter

CLASS 5: Air Compressor, 450 CFM or over; Bituminous Spreader & Bituminous Finishing Machine (Tender) (Power); Concrete Distributor & Spreader Finishing Machine; Longitudinal Float, Joint Machine, & Spray; Concrete Mixer on Jobsite 145 & under; Concrete Saw (multiple blade) (power operated); Form Trench Digger (power); Front End Loader, up to & inclu. 1 cu. yd.; Grader (motor patrol); Gunita Gunita; Hydraulic Log Splitter; Loader (Barber Green or similar type); Payhauler or similar type; Power Actuated Augars & boring Machine; Power Actuated Jacks; Pump; Roller; Self-propelled Chip Spreader (Flakerty or similar); Shouldering Machine (Power); Ascco or similar type inclu. self-propelled & Tractor Farmer Stump Chipper; Tractor, D2, TD6 or similar HP without power take-off; 6 Tree Farmer

CLASS 6: Conveyor; Dodge Deck Hand; Fireman or Tank Car Heater; Gravel Screening Plant (portable not crushing or washing); Greaser (Truck or Tractor); Leverman; Mechanic Tender; Mechanic, Space Heater (Temporary); Oilier (power Shovel, Crane, Dragline); Self-Propelled Vibrating Grader (Pad type) (35 HP & over); Tractor, 50 HP or less w/o Power take-off; & Truck Crane Oilier

TRUCK DRIVERS:

Site Preparation, Excavation & Incidental Paving;
GROUP 1: Truck Driver (Operation of Hand & Power Operated winches); Truck Trains;
Mechanic-Welder; Tractor Trailer; & Off Road
GROUP 2: Tri Axle (Incln. & Axles)
GROUP 3: Bituminous Distributor; & Tandem Axle
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Tank
Truck Tender (gas, oil, road oil & water); Tannster & Stableman; Tractor Operator
(wheel type used for any purpose); Pilot Car; Self-propelled Packer; Slurry
Operator; Single Axle; Dump; Dry Batch Hauler; Boom & "A" Frame; & Ready-Mix
Concrete

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; & G-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have worked in the business more than 5 years; 6% for employees who have worked in business less than 5 years; 7 Paid Holidays: A through G
 b. 1 Paid Holiday: D
 c. 2 weeks' paid vacation

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR. 5.5 (a) (1) (11)).

PAINTERS (CONT'D):	Basic Hourly Rates	Pringe Benefits
Remaining Co.:	\$13.87	\$1.35
Brushy Roller	14.07	1.35
Tapery Finisher	14.62	1.35
Paperhanger; Sandblasting;		
Spray; Steel	15.50	.01
PLASTERERS:	15.60	
Olmed Co.	15.77	.90
BLUMERS; Steamfitters:	17.81	1.90
Remaining Co.	12.62	1.38
ROOFERS		
SHEET METAL WORKERS:	16.89	1.46
Commercial Building	10.13	1.46
Residential	16.47	2.83
SPRINKLER FITTERS	12.05	
TRUCK DRIVERS		
LABORERS:		
Building Construction:		
Class 1	12.05	1.20
Class 2	12.20	1.20
Class 3	12.45	1.20
Class 4	12.75	1.20
Landscape & Sod Layer for all work, exclu. Residential of 4 units or less	6.80	1.00
Site Preparation, Excavation, & Incidental Paving:		
Class 1	12.15	1.20
Class 2	12.30	1.20
Class 3	12.35	1.20
Class 4	12.50	1.20
Class 5	12.60	1.20
Class 6	12.85	1.20
POWER EQUIPMENT OPERATORS:		
Building Construction:		
Class 1	17.57	1.90
Class 2	17.26	1.90
Class 3	16.52	1.90
Class 4	15.96	1.90
Class 5	15.63	1.90
Class 6	15.50	1.90
Class 7	14.26	1.90
Class 8	13.22	1.90
Class 9	12.70	1.90

POWER EQUIPMENT OPERATORS (CONT'D):	Basic Hourly Rates	Pringe Benefits
Site Preparation, Excavation, & Incidental Paving:		
Class 1	\$15.33	\$1.90
Class 2	14.82	1.90
Class 3	14.67	1.90
Class 4	14.55	1.90
Class 5	12.60	1.90
Class 6	11.90	1.90
TRUCK DRIVERS:		
Site Preparation, Excavation, & Incidental Paving:		
Blue Earth County:		
Group 1	10.32	1.30
Group 2	9.87	1.30
Group 3	9.77	1.30
Group 4	9.57	1.30
Fairbault County:		
Group 1	9.72	1.30
Group 2	9.27	1.30
Group 3	9.17	1.30
Group 4	8.97	1.30
Remaining Counties:		
Group 1	10.85	1.30
Group 2	10.40	1.30
Group 3	10.30	1.30
Group 4	10.10	1.30
FOOTNOTES:		
a. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have worked in the business more than 5 years, 6% for employees who have worked in business less than 5 years; 7 Paid Holidays; New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day After Thanksgiving; & Christmas Day		
b. 2 weeks' paid vacation		

LABORERS CLASSIFICATIONS (Building Construction):

CLASS 1: General; Carpenter Tender; Concrete; Dump Proofer below grade; Drill Runner Tender; Dumpman - dirt, asphalt, concrete, cement; Heater Tender; Hot Tar Caulker - corks; Joist Handler; Material Handler - all types Power Buggy; Rebar; Snow Blower Operator; & Tool Crib Checker

CLASS 2: Chain Saw Operator; Concrete Saw, Drill Operator; Concrete Vibrator; Demolition & Wrecking excluding remodeling; Mason Tender; Mortar Mixer - cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools; Jackhammer, Paving Buster, Chipping Hammer, Tamper Operator, etc.; Setting Stage Line Scaffold (not including "patent" Scaffolding); & Torchman - gas, electric, thermal or similar device

CLASS 3: Caisson Work; Nozzle Operator - Gunite, Cement, Sandblasting; Pipelayer; Refractory Worker; Sheet Metal Worker & Drivers, Heavy Building Excavation; Underground Work - open ditch or excavation 8' below grade; & Underpinning

CLASS 4: Driller for Blasting purposes; Dynamite Blasters or substitute products Toxev TR, water, gas, gel, brislar, silent dynamite, etc.

LABORERS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving):

CLASS 1: Unskilled; Bituminous Batcherman (stationary plant); Blacksmith Tenders; Cement Coverman Batch Truck; Cement Handler - Bulk, Bag, Carpenter Tender; Concrete Batcherman; Concrete Handler; Caisson, Footings, Columns, Piling, Slabs, etc.; Concrete Shovelers; Tampers & Puddler (paving); Concrete Longitudinal Floatman (manual bullfloat on paving); Dump Proofer below grade; Drill Runner Tender; Dumpman (dirt, paver, dumping batchtrucks, etc.); Hydrant & Valve Setter; Joint Filler (concrete pavement); Kettleman (bituminous or lead); Labor Wrecking Demolition; Landscape Gardener, sod, etc.; Pipe Derrickman (tripod, manual); Pipe Handler; Power Buggy Operator; Powder Monkey; Reinforced Steel Laborer; Reinforced Steel Setter (paving); Service Connection Maker (water, gas); Squeegeman; Stabilizing Batcherman (stationary plant); Temporary Heater & Blower Tender; Tool Crib Checker; Top Man (sewer, water or gas trench); Winch Handler (manual)

CLASS 2: Bituminous Worker - Shovelers, Raker, Floater, Squeegee, Utility; Brick Tender; Compaction Equipment (hand operated); Conduit Layer; Curb Setter; Mortar Mixer; Sand Cushion Bedmaker; Torchman - gas, electric, thermal or similar device

CLASS 3: Chain Saw; Concrete Drilling; Concrete Mixer Operator; Concrete Sawyer; Concrete Vibrator; Ditch & other work more than 8 ft. below starting level of manual work; Formsetter; Joint Saver, Mortar; Pneumatic Tools, Jackhammer, Paving Buster, Chipping Hammer, etc.; Stone Tender; & Mason Tender

CLASS 4: Bottom Man (sewer, water or gas trench) (more than 8 ft. below starting level of manual work); Brick or Block Paving Setter; Caisson Work; Cofferdam Work; Tunnel Laborer; Underground Laborer; & Underpinning

CLASS 5: Cement Gun Operator (1½" or over); Driller - Air Track or similar; Nozzelman (gunite, sandblasting, cement); & Pipelayer, Laser Beam (sewer, water, gas)

CLASS 6: Blaster Powder Man (dynamite or substitute products); Tunnel Miner (atmospheric); & Tunnel Miner Tender

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction):

CLASS 1 - Helicopter Operator; Truck & Crawler Cranes with 300' of Boom and over, including jib; Tower Crane 300' & over

CLASS 2 - Truck & Crawler Crane w/200' of Boom, up to and no. including 300' of Boom, including jib; Tower Crane 250' & over

CLASS 3 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib; Tower Crane 200' & over

CLASS 4 - Traveling Tower Crane; Master Mechanic; Pile Driving Operator; tower Crane 150' & over

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction) CONT'D:
 CLASS 5 - Truck & Crawler Cranes up to & not including 150' of boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (inside Building Perimeter); Tower cranes - Stationary 100' & over; Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief Licensee.

CLASS 6 - Air Compressor Operator, 450 CFM or over, Pump Operator and/or Conveyor Operator (2 or more machines); Hoist Engineer (2 drums); Mechanic or Welder; Pumpcrete or Concrete-type Machine Operator; Forklift; Boom Truck Operator; Concrete Mixer Op.; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator; Licensee, Concrete Batch Plant Operator; Fireman, First Class Front End Loader Operator, up to 1 cu. yd.

CLASS 8 - Air Compressor Operator, 450 CFM or over, Pump and/or Conveyor Operator; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Operator

CLASS 9 - Mechanical Space Heater (temporary heat); Oiler or Greaser; Elevator Operator

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving):
 CLASS 1: Helicopter Pilot; Crane with over 135' boom, excluding jib; Dragline and/or other similar equipment with Shovel-type controls 3 cu. yds. & over Mfg. rated cap.; Pile Driving when 3 drums are in use

CLASS 2: Cableway; Concrete Mixer, Stationary Plant over 342; Derrick (Guy or Stiffleg) (Power) (Skids or stationary); Dragline and/or similar equipment with Shovel-type controls, up to 3 cu. yds. Mfg. rated cap.; Dredge or Engineer; Front End Loader, 5 cu. yds. & over; Grader or Motor Patrol, Finishing Earthwork & Bituminous; Locomotive Crane; Master Mechanic; Mixer (Paving) Concrete Paving, Road; Mole, inclu. Power Supply; Mucking Machine, inclu. Mucking Operations, Convey or similar type; Piledriving; Refrigeration Plant Engineer; Tandem Scraper; Tractor - Boom type; Truck Crane - Crawler Crane; & Tugboat - 100 HP & over

CLASS 3: Dual Tractor; Elevating Grader; Pumpcrete; Scraper - Struck Cap. 32 cu. yds. & over; Self-propelled Traveling Soil Stabilizer

CLASS 4: Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant; Automatic Road Machine (CMI or similar); Backfiller; Batch Plant (Concrete); Bituminous Spreader & Finishing (Power); Boom Truck (Power operated boom); Cat Tractors with Rock Wagons or similar types; Chip Harvester & Tree Cutter over 150 HP; Concrete Mixer on jobsite over 145; Concrete Mobile; Crushing Plant (Gravel & stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Dope Machine (Pipeline); Drill Rigs, Heavy Rotary or Churn or Cable Drill; Fork Lift or Straddle Carrier; Fork Lift or Lumber Stacker; Front End Loader, over 1 cu. yd.; Hoist Engineer (power); Launchman (Tankman or Pilot License); Lead Greaser; Locomotive; Mechanic or Welder; Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps; Paving Breaker or Tamping Machine (Power Driven) Mighty Mite or similar type; Paving Milling Machine; Pickup Sweeper, 1 cu. yd. & over Hopper cap.; Pipeline Wrapping, Cleaning or Bending Machine; Power Plant Engineer 100 K.W.H. & over; Power Actuated Horizontal Boring Machine, over 6"; Pugmill; Roller, 8 tons & over; Rubber-tired Farm Tractor, Backhoe Attach.; Sheep Foot Rollers; Slip Form (Power Driven) (Paving); Tie Rammer & Ballast Machine; Tractor, over D2, TD6 or similar HP with Power Take-off; Tractor, over 50 HP without Power Take-off; Trenching Machine (sewer, water, gas); Turn-pull (or similar type); Well Point Installation, Dismantling or Repair Mechanic; Hydraulic Tree Planter

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving) CONT'D:
 CLASS 5: Air Compressor, 450 CFM or over; Bituminous Spreader & Bituminous Finishing Machine (Tender) (Power); Concrete Distributor & Spreader Finishing Machine; Longitudinal Float, Joint Machine, & Spray; Concrete Mixer on jobsite 145 & under; Concrete Saw (multiple blade) (power operated); Form Trench Digger (power); Front End Loader, up to & inclu. 1 cu. yd.; Grader (motor patrol); Gunite Guniting; Hydraulic Log Splitter; Loader (Barber Greene or similar type); Payhauler or similar type; Power Actuated Augers & Boring Machine; Power Actuated Jacks; Pump; Roller; Self-propelled Chip Spreader (Flakerty or similar); Shouldering Machine (Power) Aspc or similar type inclu. self-propelled Sand & Chip Spreader; Stump Chopper; Tractor, D2, TD6 or similar HP without power take-off; & Tree Farmer
 CLASS 6: Conveyor; Dredge-Deck Hand; Fireman or Tank Car Heater; Gravel Screening Plant (portable not crushing or washing); Greaser (Truck or Tractor); Leverman; Mechanic Tender; Mechanic, Space Heater (Temporary Heat); Oiler (Power Shovel, Crane, Dragline); Self-Propelled Vibrating Packer (Pad type) (35 HP & over); Tractor, 50 HP or less w/o Power Take-off; & Truck Crane Oiler
 TRUCK DRIVERS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving):
 GROUP 1: Truck Driver (Operation of Hand & Power Operated winches); Truck Trains; Mechanic-Welder; Tractor Trailer; & Off Road
 GROUP 2: Tri Axle (Inclu. 4 Axles)
 GROUP 3: Bituminous Distributor; & Tandem Axle
 GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Tank Truck Tender (gas, oil, road oil & water); Teamster & Stableman; Tractor Operator (wheel type used for any purpose); Pilot Car; Self-propelled Packer; Slurry Operator; Single Axle; Dump; Dry Batch Hauler; Boom & "A" Frame; & Ready-Mix Concrete

WELDERS- Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

COUNTY: PITTSBURG
DATE: Date of Publication
SUPERSEDES DECISION NO. OK81-4051 dated July 10, 1981 in 46 fr 35886
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

Basic Hourly Rates	Fringe Benefits	POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
\$15.86	2.60	GROUP I	\$15.75	2.18
16.35	2.415	GROUP II	15.25	2.18
11.75	1.05	GROUP III	14.75	2.18
12.00	1.55	GROUP IV	14.50	2.18
13.35	1.55	GROUP V	14.25	2.18
14.35	38+1.34	GROUP VI	14.00	2.18
14.60	38+1.34	GROUP VII	13.75	2.18
12.62	1.01	GROUP VIII	12.75	2.18
14.60	2.37	GROUP IX	13.35	2.18
		GROUP X	12.90	1.39
		ROOFERS	15.88	1.47
		SHEET METAL WORKERS	13.47	1.88+A
		SOFT FLOOR LAYERS		
		A--Six Paid Holidays:		
		New Years Day, Memorial		
		Day, 4th of July, Labor		
		Day, Thanksgiving Day,		
		Christmas Day,		
		SPRINKLER FITTERS	16.17	2.83
		TERRAZZO WORKERS	14.38	2.20
		TILE SETTERS	14.38	2.20
		TILE & TERRAZZO Finisher	11.98	1.40
		TRUCK DRIVERS:		
		GROUP I	10.43	
		GROUP II	10.53	
		GROUP III	10.63	
		GROUP IV	10.58	
		GROUP V	10.73	
		PAINTERS:		
		Brush and roller	11.05	.70
		Highwork and stage	11.65	.70
		Sandblasting and spray	11.90	.70
		Hot or bituminous	12.55	.70
		Sheet rock power tools	11.65	.70
		PLUMBERS-PIPEFITTERS	17.40	2.20

CLASSIFICATION GROUP DEFINITIONS

LABORERS:
GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only, wheeling and placing of concrete; handling of lumber, steel, cement and distribution of materials all cleaning, including cleaning of windows; wrecking and razing of building and all structures, cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tenders; and common laborers

LABORERS (cont'd)

GROUP II - All machine tool operators that come under the jurisdiction of the laborers; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to four inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; highwork over 30 ft. from the ground or floors; cement finisher tenders; work on swinging scaffold; all kettle and pot men, tank cleaning, all pipe dopping treating and wrapping, including all men working with dope; mortar and plaster mixing machine, pump-crete machine, and gunite mixing machines, including placing of concrete, handling creosoted or treated materials, liquid acids, or like materials when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies previously used by laborers; all scale men on batch plants; all laborers screening sand, running sand drier, and feeding operators in sand blasters, except nozzle; signal men cutting torch operators in connection with laborers' work; concrete grader

POWER EQUIPMENT OPERATORS:

GROUP I
All crane type equipment with 300' of boom or over (including jib)
GROUP II
All crane type equipment with 200-300' of boom (including jib)
GROUP III
All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more
GROUP IV
Side boom (booms 30' and over); Guy Derrick
GROUP V
Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30')
GROUP VI
Fork lift (35' and over); dozer (engine hp 65 or over; Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade

CLASSIFICATION GROUP DEFINITIONS (cont'd)

POWER EQUIPMENT OPERATORS (cont'd):

GROUP VII

Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulverizer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-tuel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large wharves when and if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII

Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

GROUP IX

Greaser and tilt top trailer operator

TRUCK DRIVERS:

GROUP I - Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses
GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready-mix concrete trucks up to but not including 3 yards

GROUP V - Ready-mix concrete trucks 3 yards and over

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDES DECISION

STATE: OKLAHOMA

COUNTY: WAGONER

DECISION NO. OK82-4062 DATE: Date of Publication

SUPERSEDES DECISION NO. OK81-4069 dated September 4, 1981 in 46FR44646

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

ASBESTOS WORKERS	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	\$16.45	1.78
BRICKLAYERS	16.35	2.415
CARPENTERS:	13.60	1.75
Millwrights-Piledrivermen	12.28	1.48
CEMENT MASONS	12.78	1.48
ELECTRICIANS (ZONE II):	14.90	.76
Electricians	14.55	48+.80
Cable splicers	14.95	48+.80
ELECTRICIANS (ZONE II):	14.95	48+.80
Electricians	15.35	48+.80
Cable splicers	15.35	48+.80
ELECTRICIANS (ZONE III):	14.35	38+1.34
Electricians	14.60	38+1.34
Cable splicers	14.60	38+1.34
ELEVATOR CONSTRUCTORS:		
Journeyman	15.12	2.465+A
Helpers	70¢JR	2.465+A
Probationary helper	12.62	1.31
GLAZIERS	14.60	2.37
IRONWORKERS		
Group I	9.65	1.00
Group II	9.95	1.00
LINE CONSTRUCTION		
Linemen	14.90	344+.45
Cable splicers	16.09	344+.45
Hole digger operator	13.24	344+.45
Heavy equipment op. (pole or cat equivalent)	13.25	344+.45
Jackhammerman	10.61	344+.45
Line truck (winch op.)	11.68	344+.45
Powderman	12.86	344+.45
Groundman	9.54	344+.45
Truck driver (flat bed ton and half and under)	10.13	344+.45
PAINTERS (S/W 1/2 of Wagoner Co.):		
Brush and roller	11.05	.70
Highwork and stage	11.65	.70
Sandblasting and spray	11.90	.70
Hot or bituminous	12.55	.70
PAINTERS (N/W 1/2 of Wagoner Co.):		
Brush and roller	13.95	.90
Highwork or stage	14.35	.90
Sandblasting or spray	14.95	.90
Hot or bituminous	15.25	.90
Sheetrock hand tools	13.95	.90
Sheetrock power tools	14.35	.90

PLUMBERS-STEAMFITTERS

POWER EQUIPMENT OPERS.:

GROUP I

GROUP II

GROUP III

GROUP IV

GROUP V

GROUP VI

GROUP VII

GROUP VIII

GROUP IX

ROOFERS

SHEET METAL WORKERS

SPRINKLER FITTERS

SOFT FLOOR LAYERS

TRUCK DRIVERS:

GROUP I

GROUP II

GROUP III

GROUP IV

GROUP V

FOOTNOTES:

A--6 mos. to 5 yrs. - 6¢; over 5 years

8¢ of basic hourly rate PLUS 6 PAID

HOLIDAYS - A through E and G.

B--SEVEN PAID HOLIDAYS

PAID HOLIDAYS:

A--New Years Day; B--Memorial Day;

C--Independence Day; D--Labor Day;

E--Thanksgiving Day; F--Friday after

Thanksgiving Day; G--Christmas Day

WELDERS--receive rate prescribed for

craft performing operation to which

welding is incidental.

UNLISTED classifications needed for work

not included within the scope of the

classifications listed may be added

after award only as provided in the

labor standards contract clauses (29

CFR, 5.5 (a)(1)(ii)).

CLASSIFICATION GROUP DEFINITIONS

LABORERS:

GROUP I - All digging and dirt work, firing of salamanders and snudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only, wheeling and placing of concrete; handling of lumber, steel, cement and distribution of materials all cleaning, including cleaning of windows; wrecking and razing of building and all structures, cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending; and common laborers

GROUP II - All machine tool operators that come under the jurisdiction of the laborers; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to four inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; highwork over 30 ft. from the ground or floors; cement finisher tenders; work on swinging scaffold; all kettle and pot men, tank cleaning, all pipe dopping treating and wrapping, including all men working with dope, mortar, and plaster mixing machine, pump-crete machine, and gunite mixing machines, including placing of concrete, handling creosoted or treated materials, liquid acids, or like materials when injurious to health, eye and skin clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies previously used by laborers; all scale men on batch plants; all laborers screening sand, running sand drier, and feeding operating and sand blasters, except nozzle; signal men cutting torch operators in connection with laborers' work; concrete grader

POWER EQUIPMENT OPERATORS:

GROUP I - All crane type equipment with 300' of boom or over (including jib)
 GROUP II - All crane type equipment with 200-300' of boom (including jib)
 GROUP III - All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more
 GROUP IV - Side boom (booms 30' and over); Guy Derrick
 GROUP V - Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30')

GROUP VI - Fork lift (35' and over); dozer (engine hp 65 or over; Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade

CLASSIFICATION GROUP DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (cont'd)

GROUP VII - Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvmixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-dual, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII - Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

GROUP IX

Greaser and tilt top trailer operator

TRUCK DRIVERS:

GROUP I - Pick-up, 1 1/2 tons or 2 1/2 yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses
 GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards
 GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
 GROUP IV - Ready-mix concrete trucks up to but not including 3 yards
 GROUP V - Ready-mix concrete trucks 3 yards and over

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPRESEDEAS DECISION

COUNTIES: Latimer, Leflore, Haskell,

Sequoyah and Pushmataha

DATE: Date of Publication

SUPERSEDES DECISION NO. OK81-4072 dated September 4, 1981 in 46 FR 44648

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

STATE: OKLAHOMA

Basic Hourly Rates	Pringe Benefits	Basic Hourly Rates	Pringe Benefits
ASBESTOS WORKERS	2.08	\$16.45	2.08
BOILERMAKERS	2.415	16.35	2.415
BRICKLAYERS-STONEMASONS	1.75	15.60	1.75
CARPENTERS (AREA I):	1.55	12.00	1.55
Millwrights-Piledrivermen	1.35	13.35	1.35
CARPENTERS (AREA II):	1.54	10.84	1.54
Millwrights-Piledrivermen	1.54	12.30	1.54
CARPENTERS (AREA III):	1.48	12.28	1.48
Millwrights-Piledrivermen	1.48	12.78	1.48
CARPENTERS (AREA IV):	.75	12.98	.75
Millwrights-Piledrivermen	.75	14.43	.75
CEMENT MASONS:			
Leflore County and the			
southern portion of			
Sequoyah County			
Pushmataha County			
ELECTRICIANS (AREA I):	.76	12.00	.76
DD - 90.80+23 5.59+1/48	DD	14.94	DD
Electricians	DD	14.79	DD
Cable splicers	DD	15.04	DD
ELECTRICIANS (AREA II):			
Electricians		14.55	44.80
Cable splicers		14.95	44.80
ELECTRICIANS (AREA III):			
Electricians		14.95	44.80
Cable splicers		15.35	44.80
GLAZIERS		12.62	1.01
IRONWORKERS		14.60	2.37
LABORERS (Haskell, Leflore,			
and Sequoyah Counties):			
Area I		9.65	1.00
Area II		9.95	1.00
LABORERS (Latimer and Push-			
mataha Counties):			
Area I		9.25	1.00
Area II		9.55	1.00
MARBLER SETTERS		14.38	2.20
TILE & TERRAZZO WORKERS		14.38	2.20
EXPERIENCED FINISHERS:			
Floor machine operator		11.98	1.40
Base machine operator		12.16	1.40
		12.48	1.40

DECISION NO. OK82-4061

CLASSIFICATION AREA AND GROUP DEFINITIONS

CARPENTERS-MILLWRIGHTS-PILEDRIVERMEN:

AREA I
Latimer, Leflore and that portion of Haskell County south of Highway 9 and the North one-third of Pushmataha CountyAREA II
Sequoyah County east of Highway 82 excluding the city of VivanAREA III
Remainder of Haskell and Sequoyah CountiesAREA IV
Remainder of Pushmataha CountyLABORERS:
GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only; wheeling and placing of concrete; handling of lumber, steel, cement and distribution of materials all cleaning, including cleaning of windows; wrecking and razing of building and all structures, cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending; and common laborers

GROUP II - All machine tool operators that come under the jurisdiction of the laborers; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to four inches and sump form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; highwork over 30 ft. from the ground or floors; cement finisher tenders; work on swinging scaffold; all kettle and pot men, tank cleaning; all pipe doping treating and wrapping, including all men working with dope; mortar and plaster mixing machine, pump-crete machine, and gunite mixing machines, including placing of concrete, handling creosoted or treated materials, liquid acids, or like materials when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies previously used by laborers; all scale men on batch plants; all laborers screening sand, running sand drier, and feeding operating and sand blasters, except nozzle; signal men cutting torch operators in connection with laborers' work; concrete grader

POWER EQUIPMENT OPERATORS:

GROUP I
All crane type equipment with 300' of boom or over (including jib)GROUP II
All crane type equipment with 200-300' of boom (including jib)GROUP III
All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or moreGROUP IV
Side boom (booms 30' and over); Guy DerrickGROUP V
Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30')

CLASSIFICATION AREA AND GROUP DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (cont'd)

GROUP VI

Fork lift (35' and over); dozer (engine hp 65 or over; Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade

GROUP VII

Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers; Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulverizer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-que, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large wharves when and if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII

Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

GROUP IX

Greaser and tilt top trailer operator

TRUCK DRIVERS:

GROUP I - Pick-up, 14 tons or 24 yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses
GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV - Ready-mix concrete trucks up to but not including 3 yards
GROUP V - Ready-mix concrete trucks 3 yards and over

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 82-32317 Filed 11-24-82; 8:45 am]

BILLING CODE 4510-27-C

Residential Conservation Service

**Friday
November 26, 1982**

Part IV

**Department of
Energy**

**Residential Conservation Service Federal
Standby Plan; Proposed Rulemaking and
Public Hearings**

DEPARTMENT OF ENERGY

10 CFR Part 456

[Docket No. CAS-RM-80-123]

Residential Conservation Federal Standby Plan

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) is proposing a regulation to implement Section 219(a) of the National Energy Conservation Policy Act (NECPA) as amended by the Energy Security Act (ESA) Section 219 of NECPA directs DOE to promulgate a Federal Standby Plan which is to be used by covered regulated utilities in States that do not have approved Residential Conservation Service (RCS) plans and by covered regulated utilities in States that have approved RCS plans that are found not to be implemented adequately.

The RCS Program requires natural gas and electric utilities to perform energy audits of their customers' homes upon request and to provide certain other related services to their residential customers. In developing this proposed RCS Federal Standby Plan (FSP or Plan), DOE has relied heavily on the recently issued revised final regulation for the RCS Program (47 FR 27752, June 25, 1982). However, this proposed FSP rule does differ from the revised RCS Program regulation since DOE is required to assume, when necessary, the responsibilities associated with directly administering the RCS Program.

Pursuant to Section 219(a) of NECPA, utilities will not be subject to the provisions of the FSP until the Final Rule for the Plan is issued and the Department issues an order directing a particular utility to offer an RCS Program to its residential customers.

DATES: A public briefing will be held on the proposed FSP in Washington, D.C., at 9:30 a.m. on December 2, 1982, in conjunction with a briefing on the Commercial and Apartment Conservation Service Program.

Public hearings on the FSP will be held in three cities, beginning at 9:00 a.m., local time, in conjunction with DOE hearings on a proposed rule on the Commercial and Apartment Conservation Service Program. The hearings will be held as follows: in Dallas, Texas, on January 10 and 11, 1983; in Portland, Oregon, on January 13 and 14, 1983; and in Washington, D.C., on January 19-21, 1983. Please bring at

least six copies of the oral statement to the hearing.

Written comments (10 copies) on this proposed rule must be received by February 2, 1983, 4:30 p.m., e.s.t., to ensure their consideration.

Request to speak at the hearing must be received no later than 4:30 p.m. on the following days: January 4 for the Dallas hearing, January 6 for the Portland hearing, and January 13 for the Washington, D.C. hearing.

ADDRESSES: The public briefing will be held in Washington, D.C., at: U.S. Department of Energy, Forrestal Building, Room GE-086, Auditorium, 1000 Independence Avenue, SW., Washington, D.C. 20585.

All written comments (10 copies) and requests to speak at the public hearings should be addressed to: Office of Conservation and Renewable Energy, Office of Hearings and Dockets, RCS Federal Standby Plan, Docket No. CAS-RM-80-123, U.S. Department of Energy, 1000 Independence Avenue, SW., Mail Station 6B-025, Room 5F-078, Washington, D.C. 20585. (202) 252-9319.

Public hearings will be held at the following locations:

The Dallas hearing (Jan. 10-11) will be held at: Earl Cabell Federal Building, 1100 Commerce Street, Room 7A23, Dallas, Texas 75242.

The Portland hearing (Jan. 13-14) will be held at: Bonneville Power Administration, U.S. Department of Energy, Auditorium, 1002 Northeast Holladay Street, Portland, Oregon 97223.

The Washington, D.C., hearing (Jan. 19-21) will be held at: U.S. Department of Energy, Forrestal Building, Room GE-086, Auditorium, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Mark D. Friedrichs, CE-115, Building Service Division, Office of Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 5F-064, Washington, D.C. 20585. (202) 252-1650.

Daniel Ruge or Vivian Lewis, GC-33, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 6B-144, Washington, D.C. 20585. (202) 252-9513.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Major Provisions
- III. Regulatory Impact Analysis
- IV. Regulatory Flexibility Act
- V. Environmental Impacts
- VI. Paperwork Reduction Act
- VII. Comment and Hearing Procedures

I. Introduction

The RCS Program was established by Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, November 9, 1978, as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. 96-294, June 30, 1980, 42 U.S.C. 8211 *et seq.* The RCS Program, as mandated by statute, requires large electric and natural gas utilities to inform their residential customers of the benefits of certain energy conservation and renewable resource measures, to offer their customers energy audits of their homes, and to offer to arrange for the installation and financing of such measures.

For those States that elect to participate in the program, the legislation requires substantial and detailed State activity. In the original RCS Program regulations of November 7, 1979 (the Nov. 7th rule) (44 FR 64602), DOE prescribed, in considerable detail, how States and utilities were to perform their various RCS activities. On June 25, 1982, DOE published an amended Final Rule revising the RCS Program to provide greater flexibility to participating States and covered utilities and to permit reductions in the costs of implementing the program (47 FR 27752).

Nevertheless, Section 219(a) of the NECPA provides that if a State plan is not approved within the allotted period, or if the Department determines, after notice and opportunity for a public hearing, that an approved plan is not being implemented adequately in a State, DOE shall promulgate a plan that meets the requirements of the Act. Thus, where States are unwilling or unable to carry out their role under the law, the legislation requires implementation of a Federal Standby Program.

Exercise of Federal Standby Authority now appears to be warranted in at least those States that have chosen not to submit plans, as well as in an undetermined number of States that have not yet implemented or may not be adequately implementing approved plans. Section 219(a) of NECPA specifically requires the Department to require, by order, each regulated utility in such States to implement the Federal Standby Plan (FSP or Plan) within 90 days of that order.

Section 219(a)(1) of NECPA requires that the RCS Federal Standby Plan meet the requirements of Section 213 for RCS plans. There is, thus, a great degree of uniformity between the FSP and the revised RCS regulation concerning State plans (10 CFR Part 456, Subparts B and C). The basic difference between the

two rules is that in the FSP, DOE has assumed the role and responsibility otherwise delegated to the lead State agency under the amended RCS Final Rule. This means that wherever the State or its designee is the responsible party for a statutory element of the RCS Program (enforcement, listing, etc.), the Department has that responsibility under the FSP. It also means that where the States were provided flexibility and discretion in the amended RCS Final Rule regarding the implementation of a provision, DOE would now generally exercise such discretion.

DOE originally proposed an RCS Federal Standby Plan on January 9, 1981 (46 FR 2522). This proposed Plan reflected the detailed and often burdensome requirements of the original RCS Program regulations. Based on a review of the Nov. 7th rule, DOE proposed substantial revisions to the RCS Program regulations on November 12, 1981 (46 FR 55837). Because of the substantial changes proposed to the original regulations, the Department announced, as part of the November 12th notice, the withdrawal of the previously proposed FSP and its intention to repropose the Plan following issuance of the amended final RCS regulation.

Since the publication of the revised RCS regulation on June 25, 1982, DOE has developed and is today issuing for public comment a revised proposed RCS Federal Standby Plan. Public comments on the FSP originally proposed in 1981 have been analyzed and, to the extent appropriate, considered during the development of this proposal. However, this proposal does not represent an amendment to or revision of the earlier proposed Plan, and thus was not based primarily on the comments received on the earlier proposal.

In developing today's proposed FSP, DOE has relied heavily on the revised RCS rule. However, the proposed Plan contains some requirements not found in that regulation. In determining when it was necessary to develop additional provisions, DOE has attempted to balance a number of sometimes conflicting objectives. These are:

(1) To provide adequate control and oversight to DOE, as the direct administrator of the FSP, to ensure safe, effective, and nondiscriminatory implementation of the program by affected utilities;

(2) To interpret DOE's role as the "lead agency" with enough specificity to provide for the rapid and comparatively uniform implementation of the Plan by utilities in any given State;

(3) To provide utilities with enough flexibility to enable them to develop

RCS Programs reflecting the economic and climatic conditions of their service areas; and

(4) To minimize the administrative workload of both DOE and the affected utilities.

A major goal of the revised RCS regulation was to provide greater flexibility to the States. However, it was often impossible or inappropriate in this proposed FSP to provide the same degree of flexibility to individual utilities. A particular concern arose regarding the potential for the development and implementation of radically different RCS Programs by utilities serving the same locality or within the same State. Such a development would result in significantly different services being offered to the same eligible customers or to adjoining communities. In addition, significant utility flexibility and responsibility for program design could result in substantial duplication of effort and costs for affected utilities. However, if flexibility and program responsibility are not provided to the utilities, the FSP may be unable to reflect regional differences adequately. A more prescriptive Plan is also more likely to impose unnecessary burdens on some utilities, and may also be more difficult to implement.

DOE's approach to the discretion issue has been to use a sliding scale of flexibility, where the amount of latitude allowed the utilities varies, depending upon the issue. In some instances (often those dealing with consumer protection), DOE is proposing to specify minimum requirements and/or prohibitions on utility, installer, supplier, and lender activities under the program. In nearly every such case, the utility is allowed to apply to DOE for an exception from the specified provision. In a number of other cases, the proposed FSP allows utilities to develop their own procedures, but requires them to obtain DOE approval before beginning the program (e.g., procedures for auditor and installer training). By adopting this approach, DOE hopes to enable utilities operating under a current RCS Program in one State to adopt a similar program in a State operating under the Standby Plan.

Another approach to minimizing further the conflicting objectives would be the voluntary establishment, within any State subject to the Plan, of an organization representing all the covered utilities within the State, and possibly other affected parties as well. Such an organization could coordinate the development of statewide RCS Program procedures in those instances where the FSP allows local flexibility.

This approach could result in a more rapid and comparatively uniform implementation of the program within the State than would be the case where utilities and other parties each deal one-on-one with DOE.

DOE believes that such a body would help establish more effective and potentially less costly RCS Programs within any given State, particularly when the organization represents all the major affected parties. Therefore, if such a representative organization is voluntarily established within any given State, DOE intends to exercise its discretion, wherever possible, by permitting the organization to take maximum advantage of the flexibility allowable under the Federal Standby Plan.

DOE invites comments regarding this voluntary organization and the sliding scale of flexibility approach, and solicits recommendations on other methods of reconciling the conflicting objectives outlined above. DOE specifically requests comments on possible antitrust implications associated with utilities establishing such voluntary organizations.

Under the proposed plan, DOE has proposed that utilities be required to carry out a number of functions and to have certain responsibilities that they usually do not have under State-administered RCS programs. DOE is reluctant to place such burdens on utilities, but there are substantial, if not in some cases insuperable, practical problems with DOE itself carrying out local activities. Not the least of these problems is the lack of any existing structure designed for such a purpose and the wasted resources that would be involved in creating such a structure in a national bureaucracy for a program of such limited duration.

DOE discusses below those provisions in which it is exercising its discretion and in which it is proposing to deviate from the provisions of the RCS Final Rule. The preamble does not discuss the many provisions of the FSP that are similar to those in the RCS Final Rule, including those specifically required by NECPA. Throughout the discussion below, we will be using the term "utilities" to include participating home heating suppliers, unless otherwise noted.

II. Major Provisions

A. Section 456.1001 Definitions

All definitions relevant to the RCS Federal Standby Plan are found in § 456.105 with the following exceptions: "Energy Conserving Practices," "RCS

Federal Standby Plan," "Participating Home Heating Supplier," "Program Announcement," and "Program Measures." The definitions of "Energy Conserving Practices" and "Participating Home Heating Supplier" remain virtually the same as in the amended RCS Final Rule, except that in this proposal they reflect the assumption by DOE of State requirements and responsibilities under the RCS Federal Standby Plan. The term "RCS Federal Standby Plan" is defined in this proposal. Also, the definitions of "Program Announcement" and "Program Measures" have been included here because their definitions in § 456.105 include citations to regulatory sections of the RCS Program that are not applicable to the RCS Federal Standby Plan.

B. Section 456.1003 Procedures for Investigating and Enforcing Compliance With the RCS Federal Standby Plan

Paragraph (G) of this section provides for an administrative appeal from determinations of the Assistant Secretary regarding conflicts of law (§ 456.1003(b)); the removal of persons from the Master Record (§ 456.1012(a)(5)(vi)); and exemptions for utility subcontractors' supply and installation (§ 456.1017(b)). There shall be no administrative appeals from other determinations made by the Assistant Secretary pursuant to this subpart.

C. Section 456.1005 Scope of Benefits

Eligible customers who use a utility's arranging services are entitled to the benefits of the measure warranties, quality assurance, customer billing, loan repayments, contractor, supplier, and lender guarantees, and access to conciliation and redress. This section describes these benefits and the specific actions an eligible customer must take to be able to avail himself of these benefits.

D. Section 456.1006 Program Announcement

In this proposal, as required by NECPA, each utility subject to the Plan must distribute a program announcement to all eligible customers no later than 90 days after the Department issues an order for the utility to comply with the Plan. The utility must repeat this distribution of program announcements every 2 years thereafter until January 1, 1985.

Although the RCS Program regulation requires that program announcements contain estimates of energy cost savings for energy conservation practices, energy conservation measures, or renewable resource measures, it does

not stipulate a period for which estimates of energy cost savings must be complied. This was an area of flexibility given to States in the revised RCS regulation. In its assumption of the role of lead agency, DOE proposes that estimates under the FSP should cover 1 year. DOE seeks comment on the appropriateness of this time period.

As in the revised RCS Program regulation, DOE is proposing that audit offers may be conditional. If a utility decides to conditionally offer audits, then the scheduling must be based on such nondiscriminatory factors as geographic area, billing cycle, or type of energy customer. Unlike the RCS Program regulation that allows an interval of 2 years between a conditional and an unconditional audit offer, DOE is proposing that the unconditional offer must be given within 1 year of a conditional offer. Since the statutory requirement to offer audits expires on January 1, 1985, it is necessary to impose this 1-year requirement to ensure that all eligible customers receive an unconditional audit offer. This 1-year interval should be sufficient to allow utilities to fulfill requests for residential energy audits without placing undue strain on their resources.

DOE seeks comment on its proposal that program announcements must contain the following items, which are not required under the amended RCS regulation:

- (1) A description of program benefits and an explanation of what action an eligible customer must take to qualify for them;
- (2) A list of direct costs, if any, that the eligible customer must bear; and
- (3) The following disclosure or an equivalent statement:

The estimates contained in this program announcement are based on estimates for typical houses and local fuel prices that were in effect at the time this program announcement was published. The energy audit that we offer will provide more specific estimates for your home.

DOE proposes that utilities either use the DOE-developed list of energy conservation practices defined in § 456.105 and § 456.1001 or that they develop their own list of specific energy conservation practices. Such a list must be submitted to DOE for approval in accordance with § 456.1022. DOE is also proposing that, if a utility wishes to include advertising in its program announcement, it must seek DOE approval for such advertising. DOE approval will be contingent on the utility ensuring that the advertising is neither discriminatory nor anticompetitive.

It is also proposed that utilities submit to the Department the procedures used to determine the estimates of savings in energy costs of adopting energy conservation practices and installing program measures. These estimates are integral parts of the decisions made by eligible customers concerning whether or not to adopt energy conserving practices and to install energy conservation or renewable resource measures.

DOE invites comments concerning whether additional information on available financial assistance (e.g., State tax credits, weatherization assistance for low-income persons, or other available financial assistance) should be required for inclusion in the program announcement.

E. Section 456.1007 Requirements for Program Audits

The requirements for energy audits under the Plan follow the amended Final Rule in most respects. The following discussion highlights those instances where DOE is proposing to set more specific requirements than those set forth in the amended RCS regulation.

DOE proposes that all audit requests be responded to within a specified amount of time. For those utilities that provide unconditional audit offers, DOE proposes to require that utilities respond to such requests within 90 days. DOE also proposes that for those utilities who first conditionally offer audits to customers, a reasonable response time to audit requests based on the unconditional offer is 45 days. DOE realizes that unusual circumstances could cause some utilities to need greater flexibility to schedule audits. DOE proposes that those utilities describe such circumstances to DOE as a basis for an exception from § 456.1007(a)(1).

The FSP proposal contains specific applicability criteria developed by DOE for an auditor to use in determining whether a particular measure should be audited for in a given residence. For example, the proposed applicability criterion for ceiling insulation requires that an audit be conducted for ceiling insulation if the difference between the existing level of insulation in a particular residence and the appropriate insulation level, as determined by the Assistant Secretary, is R-11 or more. DOE has prepared a document that can be used to determine the appropriate R level of insulation by State and climate zone, which, when added to the existing R-7 insulation level assumed for the prototypical house, will most likely result in a 7-year simple payback. This

document, which incorporates the same calculation procedures used to determine the RCS measures table, may be obtained by writing the Building Services Division at the address provided at the beginning of this Notice. The proposal also references the multifamily (more than four dwelling units) applicability criteria set forth in Appendix III to the RCS Final Rule. DOE is proposing that, as an alternative to using these sets of applicability criteria, a utility may establish its own applicability criteria subject to DOE approval.

DOE is proposing that utilities subject to the FSP use the DOE Model Audit procedures or any other DOE-approved audit procedure.

DOE is proposing that auditors be required to determine the steady state efficiency of oil burning and converted oil burning furnaces and boilers by a flue gas analysis of measured flue gas temperature and carbon dioxide content. DOE also proposes that an auditor be allowed to evaluate the efficiency of gas furnaces and boilers by relying on manufacturer nameplate data and observation of furnace components, or alternatively, by a flue gas analysis of measured flue gas temperature and carbon dioxide content. DOE seeks comments on this proposal.

In an effort to minimize the potential for anticompetitive acts or practices occurring during the audit, DOE is proposing that auditors for utilities that fall under the Plan provide the eligible customer with a written statement of any substantial interest that the auditor or auditor's employer has directly or indirectly in the sale or installation of any measure or product audited for or discussed as part of the RCS audit.

F. Sections 456.1008 and 456.1009 Arranging Installation and Financing

In the amended RCS Final Rule, DOE gave States the flexibility to develop their own procedures for the governing of utility arranging services. In this proposal, DOE, in its role as lead agency, has developed the specific arranging services that utilities must offer.

DOE proposes that the installation and financing arranging services of a utility should consist of offering to provide an information packet to all its customers who have had RCS audits. This packet should include a list of contractors and financial institutions who have met the listing requirements of the RCS Program, basic information about home improvement loans, and an arrangement card. This card should be signed by the customer and the lender and/or installer, and returned to the

utility upon either receipt of an arranged loan or completion of an arranged installation, or both. The return of this card provides a record that the customer used the utility's arranging services and is thus entitled to the program's benefits (see earlier preamble discussion). DOE requests comments on whether information should also be provided on applicable State tax credits.

This arranging service may be provided to the customer at the time of the audit or with the audit results. The utility must also provide the customer with a number to call to ask questions regarding the installation and financing of program measures.

DOE feels that these arranging services provide customers with sufficient information to enable them to install and finance measures, while placing only a minimal burden upon utilities. DOE seeks comments on these proposed arranging services.

G. Section 456.1012 List of Suppliers, Contractors, and Lenders

As the listing agency, DOE or its designee is responsible for the preparation and maintenance of the Master Record of all suppliers, contractors, and lenders who sell, install, or finance program measures and who wish to be included in the lists distributed under the program. Pursuant to this proposal, however, utilities would be responsible for soliciting persons to be included on the Master Record and forwarding to DOE the collected information necessary to determine eligibility for inclusion on the Master Record. An alternative to this proposal would be for DOE to make the solicitation directly.

In carrying out its responsibility, DOE is proposing to establish procedures for temporary and extended delisting of suppliers, contractors, or lenders violating the RCS listing requirements. DOE could temporarily (for a period of 30 days) delist a party on the Master Record for the first two violations within any 12-month period. The extended delisting (for a period of 6 months) would be used for any subsequent violations within the 12-month period. Persons subject to delisting may be reinstated at the end of the prescribed period, provided all violations have been corrected and the person has agreed to pay for any inspection to verify that the corrections have been made.

Under this provision, any utility that receives information alleging that a listed party has violated a listing provision shall immediately notify the Assistant Secretary. The Assistant Secretary will then make a

determination on the case and, where necessary, notify the utility that the party has been delisted for the appropriate period. Upon receipt of such notification, the utility shall immediately remove the party's name from the list and cease any future arranging services with the party.

In those instances where a utility feels that immediate action is necessary, the utility will be permitted to remove unilaterally a person from its list. In such an event, the utility shall immediately notify the Assistant Secretary of its action and the circumstances of the case. The Assistant Secretary will then determine if delisting is appropriate. In assessing the delisting period, the Assistant Secretary will take into account the time during which the party was off the utility's list pending DOE's determination. DOE is proposing this provision to allow utilities to initiate action in those instances where quick action may be necessary, which would not be possible at a national level.

The proposed provisions covering requirements for inclusion in the Master Record and utility list distribution to eligible customers are essentially the same as those in the revised RCS Final Rule. In addition, in its role as lead agency, DOE has proposed procedures for periodically updating the lists of suppliers, contractors, and lenders. Under these procedures, utilities are periodically to send any names for inclusion or deletion to the Assistant Secretary or his designee, who will review them and notify the utilities of names that are authorized to be included or deleted from the lists. The utilities are then to revise the lists and make them available to eligible customers upon request. Given the short duration of this program, utilities would not be required, however, to solicit, a second time, applicants for inclusion on the Master Record.

H. Section 456.1013 Quality Assurance

Under § 456.317 of the amended RCS Final Rule, DOE included a general requirement that States and nonregulated utilities establish procedures to ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the RCS Program. This general provision, which was designed to give States maximum flexibility to develop a quality assurance program appropriate to their needs, replaced the specific quality assurance provisions required under the Nov. 7th RCS Program regulations. (See preamble discussion on pages 27764-27766 of the June 25th Federal Register.)

In developing the quality assurance provisions for this proposal, DOE was faced with apparently conflicting objectives. The overall objective of the Department is to minimize the regulatory burdens and costs of implementing the RCS Federal Standby Plan, yet reasonably ensure the safe and effective installation of measures under the FSP.

On one hand, DOE recognizes that prescriptive quality assurance requirements can be costly and burdensome. On the other hand, DOE is concerned because there is some evidence suggesting that improper installations have been a significant problem under several existing conservation programs. In the revised RCS regulation, DOE resolved this issue by providing the designated lead agency with the responsibility for assessing the need to establish quality assurance procedures and determine the appropriate actions to be taken as part of the RCS Program.

Under the FSP, DOE would assume the direct responsibility to establish the quality assurance procedures. DOE, however, is unlikely to be as aware of local conditions as a State agency would have been. In the absence of such a State agency, DOE could rely on individual covered utilities to assess the need for quality assurance procedures and to propose to DOE such procedures as they determine to be necessary. On the other hand, it may be inappropriate to place this responsibility on each covered utility.

For these reasons, DOE is proposing for comment two alternative quality assurance provisions. In the first, the utility would be required to develop its own quality assurance procedures which would be submitted to DOE for approval. This would be much the same as the treatment given to the lead agency under the revised RCS regulation. In the second, DOE would independently establish quality assurance procedures, yet allow the utility both some flexibility and the opportunity to request an exemption from one or more of the requirements.

Under the second alternative, DOE is proposing that utilities offer to provide to all audit customers information on how to recognize the most common types of improper installation; provide a description of the conciliation and redress protections available under Federal, State, and local laws, regulations, and the RCS Program in the event of a faulty installation; and provide information on the availability of independent (public or private) inspection services.

In addition, a utility would be required to perform random post-installation inspections over the first year of the program and to summarize the results of these post-installation inspections as part of its annual report to DOE. These inspections would determine whether measures were being installed in accordance with applicable laws, standards, or manufacturers' instructions. The utility would determine which of these to apply. Under this provision, the utility would submit its proposed inspection program to DOE for approval.

Although utilities would be provided flexibility in developing their programs, it is DOE's intent that such proposals require sufficient inspections to indicate the approximate extent to which covered measures are being improperly installed by listed contractors. Additionally, DOE would require that the results of the inspection be provided to the customer and installer within a reasonable time after the inspection.

Since DOE is concerned about imposing unnecessary burdens, the Department is interested in quantitative information on the extent of the current problems with improper installations. DOE's final determination on how to handle quality assurance will depend greatly on its perception of the necessity for prescriptive requirements. DOE also requests comments and suggestions on available alternatives which would satisfy the overall objective to minimize regulatory burdens and costs, yet reasonably ensure the proper installation of measures under the FSP.

I. Section 456.1014 Qualification Procedures for Auditors, Installers, and Inspectors

DOE proposes that each utility or participating home heating supplier develop procedures to ensure that its RCS auditors successfully complete a DOE-approved training program or pass a DOE-approved certification examination. Utilities must also develop procedures to ensure that installers of flue opening modifications, electrical and mechanical ignition systems, and wind energy devices are able to install such measures in compliance with applicable Federal, State, or local laws or regulations. Procedures would also have to be established to ensure that inspectors are able to inspect for compliance with applicable laws, regulations, or standards established for all measures. In the absence of such laws or regulations, the utility shall specify standards to be used, such as industry consensus standards or other standards subject to DOE approval. DOE is in the process of updating the

standards contained in the Nov. 7th rule as amended and will publish them as a technical document at a later date. DOE solicits comments on what, if any, other standards exist.

An exemption for utilities from installer qualification requirements has been proposed if the utility operates in a State that administers a statewide program for the licensing of such installers. It is also proposed that any auditor or inspector who has previously operated under an approved State plan not be subject to the provisions of § 456.1014 unless the utility decides otherwise. Furthermore, any installers who have previously operated under an approved State plan would be exempt within that State from the installer qualification requirements, unless they had been delisted under that plan. As an alternative to the requirement that utilities establish procedures to ensure the qualifications of installers of certain measures, DOE is considering requiring those installers to present sufficient evidence of their qualifications to DOE as a condition for inclusion on the Master Record. DOE specifically solicits comments on this issue.

J. Section 456.1016 Program Measures

The FSP proposes to allow a utility to drop and/or add to the list of program measures identified in Part 456, Appendix I, with DOE approval. The utility may exclude any program measure by substituting its own data into the economic formula described under § 456.1016, if it determines that a measure has a payback period of more than 7 years. The proposal requires that all substantiating data used to support such exclusions be submitted to DOE prior to approval of such exclusions. DOE solicits comments on these approaches.

K. Section 456.1017 Utility Supply, Installation, and Financing

With one exception, all the provisions of Subpart E and § 456.304(a)(3) and (b) of this Part regarding utility supply, installation, and financing programs are the same for utilities operating under the FSP as for covered utilities under a State plan. That exception regards the provisions for the NECPA Section 216(c) exemption, which allows a utility to supply and install measures through independent subcontractors.

Under the June 25th Final Rule, a State plan has to be amended to incorporate procedures before a utility could be allowed an exemption to supply and install measures through subcontractors. Once these plan amendments are approved by DOE, a utility may initiate

a subcontractor supply and installation program in accordance with the State plan procedures. It is then the State's responsibility to ensure that the utility is conducting its program in accordance with the approved procedures.

Since under the FSP DOE is assuming this responsibility and since DOE is concerned with the anticompetitive potential in utility supply and installation programs, DOE is proposing that utilities under the FSP that wish to supply and install measures through independent subcontractors obtain DOE approval before starting such a program. This approval will be based on the utility's program meeting the procedural requirements outlined under § 456.1017. DOE seeks comments on whether the procedures under § 456.1017 need to be more or less prescriptive.

L. Section 456.1018 Complaints Processing Procedures

Responsibility for administering complaints processing procedures has been assigned to covered utilities under the proposed Plan because DOE believes that utility administration will provide the most prompt and responsive services. The procedures consist of two tiers, conciliation conferences and redress procedures, and must be approved by DOE pursuant to § 456.1021.

For complaints against a utility, DOE proposes that the utility contract with a neutral party for arbitration of the dispute. DOE solicits comments on the use of a neutral organization for this purpose.

M. Section 456.1020 Reporting and Recordkeeping

The reporting requirements under the Plan contain those in the amended RCS Final Rule. DOE has proposed to include a few additional reporting requirements and to change the reporting deadlines. These steps are proposed to enable DOE, in its role as lead agency, to monitor effectively utility activities under the FSP.

DOE proposes that reports be due 6 months after DOE approval of a utility's program and no later than each July 1 thereafter until July 1, 1986. If the 6-month report is required to be submitted less than 90 days prior to July 1, the first annual report will not be due until the following July 1. The content requirements for the 6-month and yearly reports are proposed to vary somewhat to minimize collection of unnecessarily repetitive information.

N. Section 456.1021 Information to be Reported to the Assistant Secretary

To allow utilities some flexibility to respond to local needs, DOE has provided them with the opportunity, in a number of instances, to develop their own procedures. Utilities are required to submit these procedures for DOE review and approval prior to their implementation. In this proposed rule, the time within which they must be submitted is 30 days from the issuance of the order.

An alternative to this proposal, on which DOE seeks comment, is to stagger the deadlines for which proposed utility procedures are to be submitted. For example, the procedures describing energy savings estimates, auditor, installer, and inspector qualifications, and quality assurance would be required before those procedures describing conciliation conferences and redress proceedings.

O. Section 456.1022 Exceptions

This section describes the RCS Program requirements from which a utility may request an exception from the Assistant Secretary. This proposal allows exceptions for utilities: to include advertising in the program announcement; to develop substitute program measure applicability criteria; to use audit procedures other than those contained in the DOE Model Audit; to allow auditors to audit for and to provide costs or energy cost savings estimates of installing energy conserving measures or products or energy conserving practices that are not RCS Program measures or practices; to exclude any program measure that, based on the substitution of utility or home heating supplier data, does not pay back in 7 years or less; to add any program measure not identified in Appendix I as a program measure for its service area; and to be excluded from provisions of the quality assurance procedures.

DOE proposes that a utility seeking an exception send the request, along with supporting documents, to the Assistant Secretary in adequate time for DOE approval. A utility will not be able to implement an excepted procedure until DOE has approved the exception request. It is important to note that this exception relief is granted by the Assistant Secretary and not the Office of Hearings and Appeals, under 10 CFR Part 205, Subpart D.

III. Regulatory Impact Analysis

Section 3(c)(2) of Executive Order 12291 generally requires that an agency prepare a Regulatory Impact Analysis

for rules that are likely to have a major impact.

DOE determined that the November 12, 1981, proposal (46 FR 55836) to amend the RCS Program regulation was a major action and required preparation of a Regulatory Impact Analysis. Consequently, the Department prepared the analysis, which was finalized for publication in conjunction with the revised RCS Final Rule published on June 25, 1982 (47 FR 27752). Since the proposed RCS Federal Standby Plan regulation is largely an incorporation of the applicable revised RCS provision and was covered within the scope of the RCS analysis, DOE has determined that a separate regulatory analysis is not required for this rulemaking.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires, in part, that agencies prepare an initial Regulatory Flexibility Analysis for any proposed rule unless it is determined that the rule will not have "a significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the Federal Register.

The majority of the proposals in this rule would have an impact mainly on major utilities. DOE expects that there will only be minimal impact upon the small entities that elect to participate in the program. DOE also believes that there are sufficient provisions in the proposed regulation to prevent the occurrence of anticompetitive acts or practices. For these reasons, pursuant to Section 605(b) of the Regulatory Flexibility Act, DOE certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), DOE prepared an Environmental Impact Statement (EIS) for the entire Residential Conservation Service Program (DOE/EIS-0050). The program analyzed in the EIS included the possible Federal role in promulgating a plan for utilities in States that refuse or are unable to participate. The notice of availability was published in the Federal Register on November 7, 1979 (44 FR 64602). Copies may be obtained by writing: Building Services Division, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., CE-115,

Room 5F-064, Washington, D.C. 20585. The subject matter of this proposed rulemaking is within the scope of the programmatic Environmental Impact Statement, and the impacts of the proposed rulemaking were adequately addressed in the EIS.

VI. Paperwork Reduction Act

The information collection requirements contained in §§ 456.1020 and 456.1021 have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Comments on the information collection requirements of this proposal should be submitted to both DOE and OMB as indicated below.

VII. Comment and Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments concerning the proposed procedures, requirements, and criteria. Comments should be submitted to the address given in the addresses section of this preamble and identified on the envelope and document submitted with the designation "RCS Federal Standby Plan" (Docket No. CAS-RM-80-123). Ten copies should be submitted. All written comments must be received by February 2, 1983 to ensure consideration. Comments on the information collection requirements of this proposal should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, Attention: Mr. Jeff Hill.

All written comments received after publication of this proposed rule will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified. DOE reserves the right to determine the confidential status of information or data and to treat it accordingly.

B. Briefing and Hearing Procedures

The time and place of the public briefing are indicated in the dates and addresses sections of this preamble. The purpose of the public briefing is to give all interested parties an opportunity to hear a description of the proposed FSP and ask questions. No participant preregistration is required.

The time and location of the public hearings are also given in the dates and addresses sections of this preamble. DOE invites any person who has an interest in the proposed rulemaking, or who is a representative of a group or class of persons that has an interest in the proposed rulemaking, to make a written request to make an oral presentation. Such a request should be directed to the address given in the addresses section of this preamble and must be received before 4:30 p.m. on the dates specified in the dates section. A request should be labeled both on the document and on the envelope "RCS Federal Standby Plan" [CAS-RM-80-123].

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has an interest in the Plan; give a concise summary of the proposed oral presentation; and provide a telephone number at which he or she may be contacted through the day of the hearing.

Each person who, in DOE's judgment, proposes to present relevant material and information shall be selected to be heard and shall be amply notified by DOE of his or her participation.

Persons selected to appear at the hearing must bring at least six copies of their statements to the hearing site given above in the addresses section of this preamble. The hearings will begin at 9:00 a.m., local time.

C. Conduct of Hearings

DOE reserves the right to arrange the schedule of representatives to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of the persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will evaluate the question's relevance and whether time limitations permit it to be presented for a response. The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of

Information Reading Room, Room 1E-090, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

List of Subjects in 10 CFR Part 456

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Solar energy, and Utilities.

(Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, amended by Title V, Subtitle B of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*)

In consideration of the foregoing, the Department of Energy proposes to amend Chapter II, Title 10 in Part 456 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., November 16, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

PART 456—[AMENDED]

1. 10 CFR Part 456 is amended by adding to the Table of Contents the following entries for Subpart J:

Subpart J—Residential Conservation Service (RCS) Federal Standby Plan

Sec.	
456.1000	Introduction.
456.1001	Definitions.
456.1002	Coverage of RCS Federal Standby Plan.
456.1003	Procedures for investigating and enforcing compliance with the RCS Federal Standby Plan.
456.1004	Utility and home heating supplier liability.
456.1005	Scope of benefits.
456.1006	Program announcement.
456.1007	Requirements for program audits.
456.1008	Arranging installation.
456.1009	Arranging financing.
456.1010	Accounting and payment of costs.
456.1011	Customer billing, repayment of loans, and termination of service.
456.1012	List of suppliers, contractors, and lenders.
456.1013	Quality assurance.
456.1014	Qualification procedures for auditors, installers, and inspectors.
456.1015	Home heating suppliers.
456.1016	Program measures.
456.1017	Supply, installation, and financing by utilities.
456.1018	Complaints processing procedures.
456.1019	Coordination.
456.1020	Reporting and recordkeeping.

- 456.1021 Information which a utility and participating home heating supplier shall report to the Assistant Secretary.
- 456.1022 Exceptions.

2. 10 CFR Part 456 is amended by adding a new Subpart J to read as follows:

SUBPART J—RESIDENTIAL CONSERVATION SERVICE (RCS) FEDERAL STANDBY PLAN

§ 456.1000 Introduction.

(a) The RCS Federal Standby Plan (FSP or Plan) specifies the procedures to be followed to ensure that eligible customers receive the services of the RCS Program when a State does not submit an acceptable RCS Plan within the necessary time or fails to implement adequately an approved plan.

(b) This Plan sets forth the functions which utilities subject to the Plan will be ordered to perform. The core of the Plan is the offer of an on-site energy audit of an eligible customer's residence. In addition, the utility would provide related services, such as helping the customer locate conservation suppliers, identifying qualified contractors, and supplying information on lenders for any necessary financing for the purchase or installation of conservation and renewable resource measures.

§ 456.1001 Definitions.

All definitions set forth in § 456.105 are applicable where relevant to this subpart, except as set forth below.

Energy Conserving Practices. The term "energy conserving practices" means low or no cost practices designated by the Assistant Secretary which (a) save energy, (b) do not require the installation of energy conservation or renewable resource measures, and (c) do not adversely impact the RCS Federal Standby Plan. Such practices shall include, but are not limited to the ones set forth in § 456.105.

Participating Home Heating Supplier. The term "participating home heating supplier" means a home heating supplier that has elected to participate in the RCS Federal Standby Plan.

Program Announcement. The term "program announcement" means the RCS Program information and offer of services required to be provided by a covered utility or participating home heating supplier to each eligible customer by § 456.1006.

Program Measures. The term "program measures" means those energy conservation or renewable resource measures which the Assistant Secretary has by rule determined to be appropriate by climatic region and fuel use category and which are found in

Appendix I of this part, or which are determined to be program measures by a utility or participating home heating supplier in accordance with § 456.1016.

RCS Federal Standby Plan. The term "RCS Federal Standby Plan" (FSP or Plan) means a plan developed pursuant to Subpart F of this part and Section 219 of the National Energy Conservation Policy Act, (NECPA).

§ 456.1002 Coverage of RCS Federal Standby Plan.

(a) **Regulated utilities.** All regulated utilities providing utility service in a State where the FSP is ordered to be enforced and which meet the definition of "covered utility" shall be subject to the FSP.

(b) **Home heating suppliers.** Any home heating supplier in a State where the FSP is ordered to be enforced and which wishes to participate in the FSP may so notify the Assistant Secretary.

§ 456.1003 Procedures for Investigating and enforcing compliance with the RCS Federal Standby Plan.

(a) **Investigation and enforcement.** (1) The Assistant Secretary requires each utility and each participating home heating supplier subject to the FSP to comply with the Plan pursuant to the authority given the Assistant Secretary in Section 219 of NECPA (42 U.S.C. 8220).

(2) Individuals or groups wishing to report possible noncompliance with this Plan may inform the utility or participating home heating supplier in their area and/or the Assistant Secretary. The Assistant Secretary may investigate any allegation of noncompliance, or any complaint concerning the RCS Program or this Plan, submitted to DOE, or on his own initiative may review the activities of utilities or participating home heating suppliers subject to the FSP to determine compliance with the Plan.

(3) Utilities or participating home heating suppliers subject to the FSP shall notify the Assistant Secretary within a reasonable length of time from date of receipt of any reports of possible noncompliance with this Plan submitted in accordance with paragraph (a)(2) of this section.

(b) **Conflicts of laws.** Each utility subject to the FSP shall petition the Assistant Secretary in accordance with § 456.102 whenever the utility believes it is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA, or whenever, the utility believes it is required or permitted by a State or local law or regulation to take

any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA.

(1) This petition shall contain a copy of the applicable State or local laws or regulations and description of the action and utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(2) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(3) If the Assistant Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA or permits or requires a utility to take any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA, the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent inconsistent with NECPA or any rule or FSP promulgated pursuant to NECPA. Such an order shall be effective with respect to all utilities otherwise subject to such State or local laws or regulations and shall moot any outstanding petitions under this section by such utilities.

(c) **Appeals.** (1) Any person aggrieved by any order, finding, or determination made under paragraph (b) of this section, § 456.1012(a)(5)(vi), or § 456.1017 may appeal that order, finding, or determination within 30 days in accordance with 10 CFR, Subpart H of Part 205. All such appeals shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

(2) Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under that subpart and an order granting or denying the appeal has been issued.

§ 456.1004 Utility and home heating supplier liability.

A utility or participating heating supplier subject to the FSP that arranges for a lender to make a loan to, or a contractor to perform work for an eligible customer should not be held liable, by virtue of its role as project manager for the FSP, in any cause of action between such customer and such lender or contractor.

§ 456.1005 Scope of benefits.

(a) The benefits listed in paragraph (d) (1) through (5) of this section shall be made available to any eligible customer who receives an RCS audit and who takes the following actions:

(1) Signs a contract for the installation of a program measure with an installer listed on the Master Record; and

(2) Returns the arrangement card to the utility as provided for in § 456.1008.

(b) The benefits listed in paragraphs (d) (3), (4), and (5) of this section shall be made available to any eligible customer who receives an RCS audit and who takes the following action:

(1) Obtains a loan for the installation or purchase of a program measure from a listed lender; and

(2) Returns the arrangement card to the utility in accordance with § 456.1009(a).

(c) The benefits listed in paragraphs (d) (1), (3), (4), and (5) of this section shall be made available to any eligible customer who takes the following actions:

(1) Purchases any program measure from a supplier listed in the Master Record; and

(2) Receives some evidence from the supplier that the measure carries the measures warranty.

(d) The benefits to which an eligible customer is entitled as a result of certain actions described in paragraphs (a) through (c) of this section are:

(1) The measure warranties defined in § 456.105 with respect to any program measure;

(2) Billing of costs and repayment of loans as described in § 456.1011;

(3) The requirements placed on suppliers, lenders, and contractors by § 456.1012(b);

(4) Quality assurance in the installation of measures described in § 456.1013; and

(5) Access to the conciliation conference and redress procedures described in § 456.1018.

§ 456.1006 Program announcement.

(a) *Distribution and content.* Each utility subject to the FSP shall send to each eligible customer a copy of the program announcement no later than 90 days after the issuance of an order from the Assistant Secretary to comply with the FSP and every two years thereafter until January 1, 1985. Each participating home heating supplier shall send to each eligible customer a copy of the program announcement no later than the date set forth in the notice from the Assistant Secretary approving participation by the home heating supplier in the FSP. A program announcement must, at a minimum—

(1) List the program measures identified in Appendix I or the program measures developed by the utility pursuant to § 456.1016, for the category of residential buildings owned or occupied by such eligible customer;

(2) List the energy conserving practices defined in § 456.105 and § 456.1001 or the practices developed by the utility and approved by the Assistant Secretary pursuant to § 456.1022, and state that they are of low or no cost;

(3) Include a reasonable estimate (or a range of estimates) of the savings in energy costs for a period of one year, which are likely to result from installation of each of the applicable program measures or adoption of the energy conserving practices, individually or as a group, in a typical building or buildings in such category;

(4) Include an offer to perform each of the services required to be offered under § 456.1007 (Program Audits) § 456.1008 (Arranging Installation), § 456.1009 (Arranging Financing, and § 456.1012(c) (List Distributed to Eligible Customers) and a description of the services.

(i) The offer of the program audit may be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first. An unconditional offer, however, shall be offered within one year of a conditional offer.

(ii) The offer must explain that an eligible customer may request the services offered in the program announcement by a request card included in the program announcement, or by any other appropriate method which is the most convenient for the utility.

(iii) The offer must list the direct costs, if any, of receiving the service, which are to be charged to the eligible customer;

(5) With respect to the benefits listed in § 456.1005(d), describe the benefits and explain what actions an eligible customer must take to qualify for them, as described in § 456.1005(a)–(c);

(6) Include the following disclosure or a similar statement: "The estimates contained in this program announcement are based on estimates for typical houses and local fuel prices which were in effect at the time this program announcement was published. The energy audit which we offer will provide more specific estimates for your home"; and

(7) Include a brief explanation of the benefits of the Federal energy tax credits as follows: "The Federal Government permits most homeowners or tenants to claim tax credits of up to

15 percent (maximum credit is \$300) of the cost of conservation investments (such as insulation or storm windows) and up to 40 percent (maximum credit is \$2,200) of the cost of solar energy systems (such as solar water heaters). For more information on your eligibility for these tax credits, contact your local Internal Revenue Service Office."

(b) *Calculation procedures.* Each utility or participating home heating supplier shall provide the Assistant Secretary, pursuant to § 456.1021, with a copy of the procedures used for determining the estimates of the savings in energy costs referred to in paragraph (a)(3) of this section.

(c) *New customers.* (1) A new customer is a person who becomes an eligible customer after the initial distribution of the program announcement but before January 1, 1985.

(2) Each utility and participating home heating supplier subject to the FSP shall send a program announcement which meets the requirements of this section to each new customer within 60 days of such customer becoming a new customer.

(3) Each covered utility or participating home heating supplier shall retain in its files for not less than five years a copy of each report of each program audit performed pursuant to an RCS Program, which shall be available to any subsequent owner, without charge. Within 60 days of becoming a new customer, each new eligible customer, who is an owner of a residential building or dwelling unit therein, shall be informed by the utility or participating home heating supplier subject to the FSP that, upon request and without charge, the customer may receive a copy of the results of any program audit of the customer's residence which the utility or participating home heating supplier may have performed pursuant to the RCS Program.

(d) *Prohibitions.* (1) The program announcement shall not include any advertising, unless approved by the Assistant Secretary pursuant to § 456.1022, for the sale, installation, or financing by any supplier, contractor, or lender (including the utility and participating home heating supplier) of any energy conservation measure, renewable resource measure, energy conserving practice, or product. However, if the utility or participating home heating supplier subject to the FSP is a lender listed in accordance with § 456.1012(b)(3), the program announcement may so state. If advertising is permitted, the utility shall

ensure that such advertising does not unfairly discriminate against any person.

(2) The utility or participating home heating supplier is prohibited from unfairly discriminating among measures, eligible customers, suppliers, contractors, and lenders in the content of, and in the providing of, information required under this section.

§ 456.1007 Requirements for program audits.

(a) *Timing and preconditions.* (1) Each utility or participating home heating supplier subject to the FSP who unconditionally offers an audit to an eligible customer shall provide such audit within 90 days after the customer's request for the audit.

(2) Each utility or participating home heating supplier subject to the FSP who chooses to first conditionally offer a program audit to an eligible customer shall provide an audit within 45 days after the customer's request.

(3) A utility or participating home heating supplier may request an exception from paragraphs (a) (1) or (a) (2) of this section pursuant to § 456.1022.

(4) Each utility or participating home heating supplier subject to the FSP is prohibited from requiring any precondition for providing a program audit to an eligible customer and is prohibited from discriminating unfairly among eligible customers in providing program audits.

(b) *Contents of program audit.* (1) Each utility and participating home heating supplier subject to the FSP shall provide (either directly or through one or more auditors under contract) to each eligible customer, upon request, a comprehensive program audit which addresses the applicable program measures and identifies the appropriate energy conserving practices referred to in § 456.105 and § 456.1001 or those practices approved by the Assistant Secretary pursuant to § 456.1022.

(2) The auditor shall determine in each program audit the applicability of each program measure in that residence based on applicability criteria set forth below or in the case of residential buildings containing more than four dwelling units, based on the DOE applicability criteria set forth in Appendix III of this part. Additionally, any utility or participating home heating supplier may establish its own applicability criteria, subject to the approval of the Assistant Secretary pursuant to § 456.1022. If a program measure is not applicable, then the requirement of this section to provide estimates of the cost and savings of installation of the measure in such

residence does not apply. A program measure is applicable in a residence if—

(i) The measure is not already present in the residence;

(ii) Installation of the measure is not a violation of Federal, State, or local law or regulations;

(iii) With respect to ceiling insulation, the difference between the existing level of insulation in the residence and the appropriate insulation level, as determined by the Assistant Secretary, is R-11 or more;

(iv) With respect to wind energy devices—

(A) The estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, at 10 meters (32 feet) above ground level; and

(B) There are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device;

(v) With respect to active solar heating systems, or combined active solar systems, a site exists on or near the residence which is free of major obstruction to solar radiation and the residence has a space-heating system other than a steam heating, electric resistance radiant heating, or electric resistance baseboard heating system;

(vi) With respect to active domestic hot water systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(vii) With respect to flue-opening modifications, the furnace combustion air is taken from a conditioned area;

(viii) With respect to clock thermostats, either the residence currently has a thermostat or the existing furnace or central air conditioner is compatible with a clock-thermostat;

(ix) With respect to replacement solar swimming pool heaters, there is an existing heated swimming pool and a location exists on the premises which is free of major obstruction of solar radiation;

(x) With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls,

(xi) With respect to floor insulation, no floor insulation is present;

(xii) With respect to direct gain glazing systems and indirect gain systems, the living space of the residence has either a south-facing (+ or -45° of True South) wall or an integral south-facing (+ or -45° of True South) roof, which is free of major obstruction to solar radiation;

(xiii) With respect to solar/sunspace systems, the living space of the residence has a south-facing ground-

level wall, which is free of major obstructions to solar radiation; and

(xiv) With respect to heat-absorbing or heat reflective window and door material, the residence has an existing central or room air conditioner.

(3) Each utility and participating home heating supplier subject to the FSP shall use as program audit procedures those contained in the DOE Model Audit or any other audit procedures approved by DOE, pursuant to § 456.1022. For the purposes of this paragraph, the term "program audit procedures" means the measurements or inspections which the auditor must make in a customer's residence and the calculations which must be performed in making energy cost savings estimates.

(4) The auditor is required to base any cost and saving estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be based on estimated peak (tuned-up) steady state efficiency corrected for cycling losses. In the case of an oil furnace, or a furnace which has been converted from burning oil or coal by installation of a gas burner, steady state efficiency shall be derived by a flue gas analysis of measured flue gas temperature and carbon dioxide content. In the case of a gas furnace or boiler, steady state efficiency shall be derived from the manufacturer's design data and observation of the furnace components, or, alternatively, by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(5) The auditor shall offer, at the time of the audit, to provide the eligible customer at a minimum, with a written sample of the typical format of the audit results and a brief explanation of how to interpret such results.

(6) The auditor shall perform a program audit only for those measures provided for in Appendix I or those products or measures approved by DOE pursuant to § 456.1022.

(c) *Additional information required for program audits.* The auditor is required to present the following information to the eligible customer during, or upon completion of, the program audit:

(1) An explanation of the benefits and services listed in § 456.1005 and a brief description of how the eligible customer can qualify for such benefits and services.

(2) Upon request by the eligible customer, the lists of contractors, suppliers, and lenders developed

pursuant to § 456.1012 for the applicable program measures.

(d) *Results of program audit.* Each utility or participating home heating supplier subject to the FSP is required to provide the following information in writing to each eligible customer who receives a program audit:

(1) An estimate of the total cost expressed in dollars or a range of dollars, of installation by a contractor of each applicable program measure.

(2) An estimate of the total cost, expressed in dollars or a range of dollars, or purchase by the customer of each applicable program measure.

(3) An estimate of energy savings expressed in dollars or a range of dollars, of each applicable program measure addressed by the program audit.

(4) Information on existing Federal tax credits.

(5) In the case of a utility or participating home heating supplier which does not provide in-person results of audits, the customer must be given the opportunity to discuss the results of the audit with a qualified person.

(e) *Prohibitions and disclosure required for program audits.* (1) Unless otherwise approved by the Assistant Secretary pursuant to § 456.1022, the auditor is prohibited from estimating, as part of any program audit provided pursuant to the FSP, the costs or energy cost savings of installing any measure or product which is not a program measure.

(2) Auditors are prohibited from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders. If the utility or participating home heating supplier subject to the FSP is itself a supplier, installer, or lender listed in accordance with § 456.1012(b), the auditor may so state.

(3) No utility, participating home heating supplier, or auditor may unfairly discriminate among program measures.

(4) Each auditor must provide the eligible customer with a written statement of any substantial interest which the person or the person's employer has, directly or indirectly, in the sale or installation of any program measures.

(f) *Program audits of furnaces.* In order for an auditor of a utility or participating home heating supplier subject to the FSP to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its primary source of energy

other than the fuel or source of energy sold by that utility or participating home heating supplier, the eligible customer must request such audit by signing a form which includes the following:

If your home is heated by a source of fuel other than [state the type of fuel supplied by the utility or participating home heating supplier], only the supplier of the other fuel may audit your furnace unless you specifically request us to audit your furnace. Federal law requires that the request be in writing. If you want us to audit your furnace, although we do not supply the fuel for it, please sign below.

(g) *Qualifications for program auditors.* Each auditor who performs a program audit pursuant to the FSP shall—

(1) Be qualified according to the applicable procedures in § 456.1014(a) of this Plan; and

(2) Be under contract or subcontract to, be an employee of, or be an employee of a contractor or subcontractor to, a utility or participating home heating supplier subject to the FSP.

§ 456.1008 Arrangement Installation.

(a) Each utility and participating home heating supplier subject to the FSP shall offer to provide to each customer at the time of the audit or with the audit results an information packet containing—

(1) A list of participating contractors and lenders in the RCS Program;

(2) Basic information about the nature, types and terms of financing for energy conservation or renewable resource measures;

(3) An arrangement card which should be signed by the customer and lender and/or installer, and returned to the utility upon receipt of the arranged loan or completion of the arranged installation or both; and

(4) A telephone number which the customer may call to ask appropriate questions concerning the installation and financing of program measures.

(b) *Prohibitions.* (1) No utility or participating home heating supplier subject to the FSP shall recommend, select, or provide information about any supplier or installer when such a recommendation would result in unfair discrimination among suppliers or installers.

(2) No utility or participating home heating supplier subject to the FSP shall discriminate unfairly among customers, suppliers, installers, or program measures. However, a utility or participating home heating supplier which is listed in accordance with § 456.1012(b)(1) or (2) may so state.

(3) No utility or participating home heating supplier subject to the FSP shall arrange installation with any supplier or installer unless such person is listed in the Master Record.

§ 456.1009 Arranging financing.

(a) Each utility and participating home heating supplier subject to the FSP shall offer to provide to each eligible customer at the time of the audit or audit results, the information packet referred to in § 456.1008(a).

(b) *Prohibitions.* (1) No utility or participating home heating supplier subject to the FSP may recommend, select, or provide information about any lender when such a recommendation, selection or information would result in unfair discrimination among lenders. When arranging financing, no utility or participating home heating supplier subject to the FSP may discriminate unfairly among suppliers, eligible customers, installers, lenders, or program measures. However, if the utility or participating home heating supplier is listed in accordance with § 456.1012(b)(3), it may so state.

(2) No utility or participating home heating supplier subject to the FSP shall arrange financing for the purchase or installation of program measures with a lender unless the lender is listed in the Master Record.

§ 456.1010 Accounting and payment of costs.

(a) *Accounting.* All amounts expended or received by a utility subject to the FSP which are attributable to the RCS Program, including any penalties paid under 10 CFR Part 456 Subpart F (Federal Standby Authority) shall be separately accounted for on the books and records from amounts attributable to all other activities of the utility.

(b) *Payments of costs.* Utilities subject to the FSP shall treat costs as described below and shall notify the Assistant Secretary, pursuant to § 456.1021, how the costs described in paragraph (b)(2) of this section will be treated.

(1) All amounts expended by a utility subject to the FSP for the program announcement and all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility subject to the FSP in the same manner as other current operating expenses of providing such utility service.

(2) The cost of the following program elements shall be recovered in the manner specified by the State regulatory

authority for all regulated utilities subject to the FSP (except that the amount that may be recovered directly from a residential customer for whom the activities described in paragraph (b)(2)(ii) of this section are performed shall not exceed \$15 per dwelling unit, or the actual cost of such activities, whichever is less):

(i) Administrative and general expenses, including those associated with program audits, customer billing services, and arranging.

(ii) Project manager requirements, including—

(A) The providing of program audits;

(B) The arranging for a lender to make a loan to an eligible customer to finance the purchase and installation costs of energy conservation and renewable resource measures;

(C) The arranging to have the program measures installed; and

(D) List distribution.

(3) In determining the amount to be recovered directly from customers as provided under paragraph (b)(2) of this section, the State regulatory authority shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) *Duplication of audits.* (1) In areas where a residential customer is an eligible customer of more than one utility or participating home heating supplier, such customer is entitled to an RCS audit from only one of these utilities or home heating suppliers.

(2) No utility or participating home heating supplier subject to the FSP shall be required to make more than one audit of a residential building or dwelling unit therein, unless a new owner, who is an eligible customer, requests a subsequent audit.

§ 456.1011 Customer billing, repayment of loans, and termination of service.

(a) *Customer billing.* Every charge by a utility or a participating home heating supplier, subject to the RCS Federal Standby Plan, to a customer for any portion of the costs of carrying out any activity pursuant to the FSP that is charged to the residential customer for whom such activity is performed (including repayment of a loan) and that is included on a billing for utility service submitted by the utility or home heating supplier to such residential customer shall be stated separately on such billing from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed so as to require that charges to the customer for activities performed pursuant to the FSP

must be included on the periodic utility or fuel bill.

(b) *Repayment of loans.* (1) In the case of any loan arranged by a utility pursuant to § 456.1009, the utility, at the request of the lender, and with the approval of the customer, shall permit repayment of the loan as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in carrying out such manner or repayment.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier under FSP, or under the circumstances described in § 456.1009, by a lender other than that participating home heating supplier—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of the loan in the customer's payment of his periodic fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period;

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under applicable law) in payment by the eligible customer; and

(iii) No penalty shall be imposed by a participating heating supplier, or any other lender with which a loan is arranged by the participating home heating supplier, for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of service.* No utility or participating home heating supplier subject to the FSP shall terminate or otherwise restrict utility or fuel service to any customer for any default by the customer for payments due for any services under the FSP.

§ 456.1012 List of suppliers, contractors, and lenders.

(a) *Master Record.* The procedures for the preparation of a Master Record of all suppliers, contractors, and lenders who sell, install, or finance program measures in a State subject to the FSP and who wish to be included in the lists distributed pursuant to paragraph (c) of this section are as follows:

(1) DOE or its designee is the Listing Agency which is responsible for the preparation and maintenance of the Master Record. The Assistant Secretary is responsible for the criteria for inclusion in and deletion from the Master Record as well as for retaining the ultimate responsibility for the Master Record.

(2) Each utility subject to the FSP shall ensure that a reasonable attempt is

made to inform all suppliers, contractors, and lenders who sell, install, or finance program measures in their service area of the pending compilation of the Master Record. All notices shall contain the list of qualification requirements set forth in paragraph (b) of this section and § 456.1014 and shall inform potential applicants of how they may apply for inclusion in the Master Record. At a minimum, the following methods of notice shall be used by the utilities to notify the above parties as to how they may apply for inclusion to the Master Record:

(i) Publication in newspapers of general circulation in the utility service area.

(ii) Direct notification of appropriate trade associations.

(3) Utilities shall take this gathered information and forward it to the Assistant Secretary or his designee who will apply DOE's criteria to determine which of the interested parties qualify for listing.

(4) All persons, and only such persons, who agree to comply with the requirements of paragraph (b) of this section (unless on the basis of past experience, the Assistant Secretary or his designee determines that such person's agreement is not adequate assurance of compliance with the requirements of paragraph (b) of this section) shall be included in the initial Master Record, and thereafter in the existing Master Record within a reasonable time after applying for inclusion.

(5) *Delisting* (i) *Temporary delisting.* Each utility and participating home heating supplier subject to the FSP shall cease temporarily from arranging with any person in the Master Record and shall remove from the Master Record any person whom the Assistant Secretary or his designee has verified as failing to comply with the requirements of paragraph (b) of this section for a period of 30 days following this verification, or until the provisions of paragraph (a) (5) (v) of this section have been satisfied, whichever is longer. If the utility or participating home heating supplier receives information that a person in the Master Record has failed to comply with paragraph (b) of this section, the utility may, prior to notifying the Assistant Secretary or his designee, temporarily remove the person from the Master Record. The utility and participating home heating supplier must then immediately notify the Assistant Secretary or his designee. After being notified by the Assistant Secretary or

his designee, the person may inquire about the case against him or her.

(ii) *Extended delisting.* Subject to the provisions of paragraph (a) (5) (iv) of this section, any person determined by the Assistant Secretary or his designee to have violated the listing requirements of paragraph (b) of this section three times within a 12 month period shall, as ordered by the Assistant Secretary or his designee, be removed from the Master Record for a period of 6 months or until the provisions of paragraph (a) (5) (v) have been satisfied, whichever is longer, and not arranged with during this period.

(iii) Each utility and participating home heating supplier shall be required to notify immediately the Assistant Secretary of any alleged violations of the requirements of paragraph (b) of this section for inclusion in the Master Record.

(iv) Each person proposed for extended delisting shall have—

(A) Written notice from the Assistant Secretary or his designee of the proposed removal and the grounds for such removal at least 30 days before the actual removal;

(B) An opportunity to respond in writing to the allegations contained in the notice; and

(C) With respect to installers, access to the records of the utility regarding any inspections of the work of such installer.

(v) All persons removed from the Master Record pursuant to paragraph (a) (5) (i) or (ii) of this section shall have an opportunity to be included anew in the Master Record at the end of the prescribed period and provided the delisted person has—

(A) Corrected all old violations; and

(B) Agreed to pay for any inspections to verify that the corrections have been made.

(vi) Any person removed from the Master Record pursuant to paragraph (a) (5) (i) or (ii) of this section by the Assistant Secretary or his designee may appeal such removal in accordance with § 456.1003(c).

(b) *Requirements for inclusion in the Master Record.* (1) When installing program measures under the circumstances described in § 456.1005, all installation contractors included in the Master Record shall—

(i) Install only measures covered by the measures warranties provided for in § 456.105;

(ii) Comply with the contractor's measures warranty provided for in § 456.105;

(iii) Furnish the customer with a written contract describing the job to be performed and its cost;

(iv) Comply with all applicable Federal, State, and local laws and regulations and/or adopted standards;

(v) Comply with any applicable quality assurance requirements established pursuant to § 456.1013;

(vi) Comply with the applicable qualification provisions established pursuant to § 456.1014; and

(vii) Agree to participate in good faith in the conciliation conference described in § 456.1018(a) when there is a complaint by an eligible customer against such person.

(2) When supplying program measures under the circumstances described in § 456.1005, all suppliers included in the Master Record shall—

(i) With respect to the program measures the supplier is listed as carrying, supply program measures covered by the measure warranties provided for in paragraph (1) or (2) of the definition of Measure Warranties (§ 456.105);

(ii) Have a method for informing customers of those products supplied by the supplier that are program measures, and that have a measure warranty;

(iii) Comply with all applicable Federal, State, and local laws and regulations;

(iv) Comply with any applicable quality assurance provisions established pursuant to § 456.1013; and

(v) Agree to participate in good faith in the conciliation conference described in § 456.1018(a) when there is a complaint by an eligible customer against such person.

(3) When financing the sale or installation of program measures under the circumstances described in § 456.1005, all lenders included in the Master Record shall—

(i) Not take security in real property that is used as the principal residence of the eligible customer, unless the eligible customer acknowledges in writing that he or she is aware of the consequences of default on the loan;

(ii) Comply with all applicable Federal, State, and local laws and regulations;

(iii) Provide each appropriate utility and participating home heating supplier subject to the FSP in the customer's service area with copies of the lenders' loan forms; and

(iv) Agree to participate in good faith in the conciliation conference described in § 456.1018(a) when there is a complaint by an eligible customer against such person.

(c) *List distribution to eligible customers.* Each utility and participating home heating supplier subject to the FSP shall provide, upon request, to every eligible customer, lists of all suppliers,

contractors, and lenders included in the Master Record who sell, install or finance program measures in its service area or a smaller area where appropriate.

(1) Each utility subject to the FSP shall publish the list in a fair, open, and nondiscriminatory manner.

(2) Each utility and participating home heating supplier subject to the FSP shall present these lists in a fair, open, and nondiscriminatory manner.

(3) The list shall indicate the type (but not brand name) of program measure(s) each supplier or contractor sells or installs.

(4) The list of lenders shall include a statement informing customers that financial assistance under the Solar Energy and Energy Conservation Bank Act may be available from lenders included in the Master Record.

(5) Each utility and participating home heating supplier subject to the FSP shall periodically send to the Assistant Secretary or his designee any names it has received for inclusion or deletion from these lists.

The Assistant Secretary or his designee will review the names and inform the appropriate utility and participating home heating supplier of any names that are authorized to be included or deleted from these lists. Each utility shall then update these lists to reflect the approved additions and deletions received.

§ 456.1023 Quality assurance [Proposal A].

Each utility or participating home heating supplier subject to the FSP shall establish and send to the Assistant Secretary for approval, pursuant to § 456.1021, procedures to ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the FSP.

§ 456.1013 Quality assurance [Proposal B].

(a) Each utility or participating home heating supplier subject to the FSP shall establish and send to the Assistant Secretary for approval, pursuant to § 456.1021, procedures to ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the FSP. These procedures shall provide for the following:

(1) Random post-installation inspections of installations performed by each installer under the circumstances described in § 456.1005 during the first year of the utility's or participating home heating supplier's FSP program. These inspections shall determine compliance with applicable

Federal, State or local laws, standards, or manufacturers instructions as determined by the utility or participating home heating supplier. Only persons qualified pursuant to § 456.1014 shall perform inspections and no inspector shall have a financial interest in the contractor who installed the measure(s) unless the contractor is a covered utility or participating home heating supplier;

(2) A mechanism to inform the customer and installer of the results of the inspections within a reasonable time;

(3) An offer to make available to each customer, at the time of the audit or when the results of the audit are provided, information on how to recognize the most common types of improper installation;

(4) Providing information to audited customers on the Federal, State, and local conciliation and redress procedures available in the event of an improper installation; and

(5) Providing information on the availability of independent (public or private) inspection services.

(b) Any utility or participating home heating supplier may request an exception from the requirements of paragraphs (a) (1)–(5) of this section pursuant to § 456.1022. Such requests must demonstrate that existing mechanisms are sufficient to ensure reasonable levels of the quality of installations.

§ 456.1014 Qualification procedures for auditors, installers, and inspectors.

(a) *Auditor qualification requirements.* (1) Each utility and participating home heating supplier subject to the FSP must provide auditors for the RCS program who have either successfully completed an auditor training program using the DOE auditor training manual or any other DOE approved auditor training program, or passed a DOE approved certification examination.

(2) Paragraph (a) (1) of this section shall not be applicable to any auditor who has previously operated under an approved State Plan unless the utility or participating home heating supplier decides otherwise.

(b) *Installer qualification requirements.* (1) Each utility and participating home heating supplier subject to the FSP shall assure that installers of flue-opening modifications, electrical and mechanical ignition systems, and wind energy systems are able to install these measures in compliance with applicable Federal, State and local laws and regulations. In the absence of such laws or regulations, the utility or participating home heating

supplier shall specify the standards to be used, such as industry consensus standards or other standards subject to DOE approval pursuant to § 456.1021.

(2) Utilities and participating home heating home suppliers that operate in States that have enacted and are actively administering a statewide program for the licensing of such installers may request DOE to exempt them from the obligations described in paragraph (b)(1) of this section.

(3) Paragraph (b)(1) of this section shall not be applicable to any installer who has previously operated under an approved RCS Program within the State now covered by this FSP. This provision shall not apply to installers who would otherwise not be entitled to be included on a Master List because of the delisting provisions of a Federal or State RCS program.

(c) *Inspector qualification requirements.* (1) Each utility and participating home heating supplier subject to the FSP shall assure that inspectors of program measures are able to inspect for compliance with applicable laws, standards, or manufacturers' instructions as determined pursuant to § 456.1013(a)(1) [Proposal B].

(2) Paragraph (c)(1) of this section shall not be applicable to any inspector who has previously operated under an approved State plan unless the utility or participating home heating supplier decides otherwise.

(d) *Additional requirements with respect to qualifying procedures.* Pursuant to § 456.1021, each utility and participating home heating supplier subject to the FSP is required to—

(1) Provide procedures for the Assistant Secretary's review which assure that persons are permitted, in a nondiscriminatory manner, to participate in the qualification procedures and describe how this will be done; and

(2) Establish a timetable for the implementation of the qualification procedures for auditors, installers, and inspectors. For a utility, this timetable shall provide for implementation of such procedures no later than 60 days following the issuance of the order to comply with FSP. For a participating home heating supplier, this timetable shall provide for implementation of such procedures no later than the date specified on the notice sent by the Assistant Secretary approving the participation of such supplier in the FSP.

§ 456.1015 Home heating suppliers.

(a) *Participation and Withdrawal.* Any home heating supplier in a State subject to the RCS Federal Standby Plan

wishing to participate in the Plan may contact the Assistant Secretary.

(1) Notwithstanding any other provision of this part, any participating home heating supplier may request a waiver of certain requirements in this Plan as provided in paragraph (b) of this section.

(2) Any participating home heating supplier may voluntarily withdraw from the FSP by submitting to the Assistant Secretary a written notification.

(3) Prior to withdrawal, the participating home heating supplier shall give notice of its withdrawal to those customers who have either requested RCS audits or otherwise have been involved in RCS services and shall refer them to the appropriate utility in the same service area.

(4) The withdrawal notice to the Assistant Secretary shall give assurance that the home heating supplier has performed the requirements in paragraph (a)(3) of this section.

(b) *Waiver of requirements.* (1) The Assistant Secretary will individually consider requests for waivers of FSP requirements from participating home heating suppliers on the basis of the limited resources of the home heating suppliers.

(2) The Assistant Secretary will not waive the following requirements for any home heating supplier who chooses to participate in the program:

(i) Section 456.1003 (Investigation and enforcement).

(ii) Section 456.1007(e) (Prohibitions concerning program audits).

(iii) Section 456.1007(f) (Furnace audits).

(iv) Sections 456.1008(b) (1) and (2) (Prohibitions against discrimination in arranging installation).

(v) Section 456.1009(b) (Prohibitions against discrimination in arranging financing).

(vi) Section 456.1012(c) (1) and (2) (Prohibitions against discrimination in listing).

§ 456.1016 Program measures.

(a)(1) Each utility or participating home heating supplier subject to the RCS Federal Standby Plan may exclude any program measure for its service area on the following bases:

(i) When, by substituting utility or home heating supplier derived data, the program measure has payback period (P) of more than seven years, as determined by dividing the installed first cost (F) less any Federal and State tax credit (T), by the first year energy savings in dollars(S),

$P = \frac{F-T}{S}$; P 7 years; and/or

(ii) When, by substituting a utility or home heating supplier specific prototypical house, it is determined that the program measure has payback period (P) of more than seven years pursuant to the formula in paragraph (a)(1)(i) of this section.

(2) The utility or participating home heating supplier shall provide to the Assistant Secretary, pursuant to § 456.1022, data to substitute any exclusion pursuant to paragraphs (a)(1)(i) or (ii) of this section.

(b) The utility or participating home heating supplier may add to the Plan, with DOE's approval, pursuant to § 456.1022, any measure not identified in Appendix I to this Part as a program measure for its service areas.

§ 456.1017 Supply, installation, and financing by utilities.

(a) *General.* Except as provided below, the provisions of Subpart E and § 456.304(a)(3) and (b) of this Part relating to the prohibition, exemptions, waivers and other requirements affecting utility supply, installation and financing activities shall apply to the utilities subject to the FSP.

(b) *Exemption for utility subcontractors supply and installation.* The Assistant Secretary shall grant an exemption to the prohibition contained in § 456.502(a) to a covered utility to supply or install any energy conservation or renewable resource measure through contracts between such utility and independent supplier or contractors where the customer requests such supply and installation and the following conditions are met:

(1) The utility certifies to DOE that each supplier or contractor—

(i) Shall be on the list of suppliers and contractors referred to in § 456.1012;

(ii) Shall not be subject to the control of the utility, except as to the performance of such contract and shall not be an affiliate or subsidiary of such utility; and

(iii) If selected by the utility, shall be selected in a manner consistent with paragraph (b)(2) of this section.

(2) The utility submits to DOE a description of the proposed utility activities which shall include evidence that such activities—

(i) Shall not involve unfair methods of competition;

(ii) Shall not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts

for the supply or installation of energy conservation or renewable resource measures; and

(iii) Shall be undertaken in a manner that provides, subject to reasonable conditions the utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available to finance the supply or installation by any contractor on the list referred to in § 456.1012 or to finance the purchase of such measures to be installed by the customer; and

(iv) To the extent practicable and consistent with paragraphs (b)(2)(i)–(iii) of this section, shall be undertaken in a manner which minimizes the cost of residential energy conservation measures to such customers.

(3) Any covered utility wishing to obtain an exemption to the prohibition contained in § 456.502(a) shall obtain approved by sending the request for exemption along with the required conditions and evidence described in paragraphs (b)(1) and (2) of this section to the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

(4) Upon request, a utility conducting activities pursuant to this section shall provide DOE with a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the utility under paragraph (b) of this section.

§ 456.1018 Complaints processing procedures.

(a) *Conciliation conference for customer complaints.* Each utility or participating home heating supplier subject to the FSP is required to make a conciliation conference available for the purpose of resolving complaints by eligible customers against persons who install or sell installation of program measures under the circumstances described in § 456.1005. For the resolution of complaints by eligible customers against the utility or participating home heating supplier subject to the Plan concerning any matter specific to the Plan, the utility or participating home heating supplier in question shall contract with a neutral party to handle the conciliation conference.

(1) Each utility or participating home heating supplier subject to the FSP must report to the Assistant Secretary, pursuant to § 456.1021, the procedures

for conciliation conferences.

(i) The conciliation conference shall be free of cost and easily accessible to the eligible customer making the complaint.

(ii) Participation in the conciliation conference by the eligible customer making the complaint shall be voluntary.

(iii) The conciliation conference shall be conducted by an impartial conciliator who has no financial interest in any party involved in the complaint or in the outcome of the proceeding.

(2) Each utility or participating home heating supplier subject to the Plan shall permit the conciliation conference to be conducted by telephone.

(3) Complaints against any of the above parties shall be brought to the attention of the conciliator within a reasonable time.

(b) *Redress proceedings.* Each utility or participating home heating supplier subject to the FSP shall make available redress proceedings to all persons alleging injury arising from an activity carried out under the FSP or from a violation of the FSP. Each utility or participating home heating supplier shall report to the Assistant Secretary, pursuant to § 456.1021, the procedures for redress proceedings.

§ 456.1019 Coordination.

The Assistant Secretary shall contact annually the cognizant Federal, State, and local official responsible for energy conservation programs within and affecting a State which is covered by the FSP.

§ 456.1020 Reporting and recordkeeping.

(a) Each utility and participating home heating supplier subject to the FSP shall submit a report to the Assistant Secretary no later than six months after the date of DOE approval of all procedures submitted pursuant to § 456.1021. An annual report shall subsequently be submitted no later than each July 1 thereafter until July 1, 1986 unless the initial six month report is required to be submitted less than 90 days prior to July 1. In such a case, the annual report shall be submitted the following July 1 and annually thereafter through July 1, 1986.

(b) The six month report or annual report or both as indicated, shall include the following information:

(1) The approximate number of eligible customers (6 month report only);

(2) A copy of the program announcement if not already provided (6 month report only);

(3) The number of program announcements provided to eligible

customers, including the number of those making conditional audit offers (6 month report and annual report);

(4) The number of program services requested and provided, including:

(i) Energy audits (6 month report and annual report);

(ii) Arranged installations (6 month report and annual report);

(iii) Arranged financing services (6 month report and annual report); and

(iv) A summary of the results as well as the number of post-installation inspections conducted pursuant to § 456.1013 (6 month report and annual report).

(5) The nature of any direct financing activities and exempted or waived supply or installation activities engaged in by the utilities including:

(i) Where applicable, any copy of any state or local law or regulation in effect on November 9, 1978 which requires or explicitly permits the utility to engage in any supply or installation of any energy conservation or renewable resource measures (6 month report);

(ii) The procedures used to select products to be supplied, installed, or financed (6 month report and annual report);

(iii) The procedures used to select installers to perform utility supported work (6 month report and annual report);

(iv) Steps the utility has taken to ensure that the activities have no adverse effect on competition (6 month report and annual report); and

(v) The price and interest rates charged by utilities in conjunction with the supply, installation and financing services offered pursuant to exemptions or waivers granted under § 216 (b), (c), (d)(1), (D)(2), and (e) of NECPA (six month report and annual report).

(6) The number and nature of complaints by eligible customers against suppliers, contractors, and lenders which have been handled through the complaints processing procedures of § 456.1018 (6 month report and annual report); and

(7) The estimated utility or home heating supplier costs of implementing the RCS Program incurred during the reporting period (6 month report and annual report).

(c) Each covered utility and participating home heating supplier shall keep for five years from the date of the program audit a copy of the data collected during each audit, and a copy of the costs and savings presented to the customer receiving the audit and shall make such data available upon request to the Assistant Secretary.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to the Departmental implementation of program responsibilities,—

(1) Require additional information; or

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirement in paragraph (c) of this section.

§ 456.1021 Information which a utility and participating home heating supplier shall report to the Assistant Secretary.

Utilities subject to the FSP shall report the procedures described in paragraphs (a)–(h) of this section to the Assistant Secretary for his approval, no later than 30 days after issuance of an order to comply with the FSP. Participating home heating suppliers shall report the following procedures no later than the date set forth in the notice from the Assistant Secretary approving participation by the home heating supplier in the FSP:

(a) Procedures for determining the estimates of energy costs savings (§ 456.1006(b));

(b) Description of the treatment of costs described in § 456.1010(b) (1) and (2) (utility only);

(c) Procedures for ensuring that reasonable levels of effectiveness and safety are attained in the supply and installation of measures under the RCS Program (§ 456.1013) [Proposal A and B];

(d) Installer qualification requirements for flue-opening modifications, electrical and mechanical ignition systems and wind energy systems (§ 456.1014(b)(1));

(e) Procedures for handling auditors', installers', and inspectors' training including the timetable for the implementation of the qualification procedures for such persons (§ 456.1014 (a), (b)(1), (c)(1) and (d)(2));

(f) Procedures to assure nondiscriminatory participation is permitted for any person to qualify as an

installer, inspector or auditor (§ 456.1014(d)(1));

(g) Procedures for handling the conciliation conference (456.1018(a)); and

(h) Procedures for handling redress proceedings (§ 456.1018(b)).

§ 456.1022 Exemptions.

As provided for in the applicable sections, any utility or participating home heating supplier wishing to seek an exception from one or more of the following sections shall obtain approval from the Assistant Secretary by sending the request for approval, along with supporting documents to the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

(a) Section 456.1006(a)(2) (Listing substitute energy conserving practices in the program announcement);

(b) Section 456.1006(d) (Allowing advertising in the program announcement);

(c) Section 456.1007(a)(3) (Extending time for conditional or unconditional audit offers after a customer's request);

(d) Section 456.1007(b)(1) (Identifying substitute energy conserving practices during the program audit);

(e) Section 456.1007(b)(2) (Developing substitute applicability criteria);

(f) Section 456.1007(b)(3) (Developing substitute program audit procedures);

(g) Section 456.1007(b)(6) (Performing an audit for any measure or product which is not a program measure);

(h) Section 456.1007(e)(1) (Estimating costs or energy cost savings of installing any measure or product which is not a program measure);

(i) Section 456.1013(a)(1)–(5) (Requesting exemption from the requirements of the quality assurance provisions);

(j) Section 456.1016(a)(2) (Substantiating exclusion of program measures in calculating payback period); or

(k) Section 456.1016(b) (Adding program measures to the FSP not identified in Appendix I to this part).

[FR Doc. 82-32202 Filed 11-23-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Register

**Friday
November 26, 1982**

Part V

Department of Commerce

**National Telecommunications and
Information Administration**

**Public Telecommunications Facilities
Program; Final Rules**

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 21102-222]

Public Telecommunications Facilities Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Final rules.

SUMMARY: In 47 FR 11228, March 15, 1982, NTIA announced an interim revision of the rules and policies governing its Public Telecommunications Facilities Program (PTFP) and requested public comment on those revisions. NTIA has reviewed the comments and reply comments submitted in response to its Interim Rules and Policy Statement and is now issuing revised Final Rules which take into account the comments of the various parties.

EFFECTIVE DATE: The final rules will become effective on November 26, 1982.

FURTHER INFORMATION: Persons desiring further information concerning the Final Rules should contact: Robert M. Hunter, Office of General Counsel, DOC, Room 5883, Washington, DC 20230. Telephone: (202) 377-5384.

SUPPLEMENTARY INFORMATION:**I. Rules**

In response to the *Interim Rules and Policy Statement*, 47 FR 11228 (March 15, 1982), NTIA received comments and/or reply comments from 20 different organizations.¹ Comments with regard to the rules were generally favorable. While the National Association of Public Television Stations (NAPTS) suggested that NTIA's changes to the rules were unnecessary and created new burdens for the applicants, their central objection to the Interim Rules was the requirement that applicants comply with the provisions of Office of Management and Budget (OMB) Circular

A-95. Commenters were unanimous in their opposition to this requirement, arguing that it was an unnecessary duplication of the consultation requirement contained in section 392(a)(5) of the Public Telecommunications Financing Act of 1978 (Act). However, the decision to require compliance with OMB Circular A-95 is not within the control of NTIA. Although OMB is now in the process of rescinding Circular A-95, NTIA must continue to require compliance with the provisions of the circular.

Several commenting parties pointed out a number of omissions or inconsistencies in the Interim Rules and suggested minor language changes which we have incorporated into the Final Rules. The changes which follow are selfexplanatory and need no discussion. (While we have listed each of the changes here, we are publishing concurrently the complete text of the Final Rules to facilitate a better understanding of the revisions.)

- The definition of "Noncommercial educational broadcast station" contained in section 2301.3 is amended by inserting the words "a public agency or" between the words "operated by" and "a nonprofit private foundation. . . ."

- Section 2301.5(a)(2)(D) is amended by deleting the words "PTFP funds" and inserting in lieu thereof the words "PTFP funded equipment".

- Section 2301.5(a)(2)(1)(j) is amended by inserting before the semicolon the phrase "with a copy of the letters transmitting the application to the entities served".

- Section 2301.5(b)(2)(ii)(1) is amended by deleting the word "entity" and inserting in lieu thereof the word "entities."

- Section 2301.8 is amended by deleting the word "on" before the colon and inserting in lieu thereof the words "and any subsequent amendment(s) on."

- Section 2301.12(a) is amended by deleting the phrase "return the application to the applicant and" in paragraph (3) and inserting in lieu thereof the word "promptly," and deleting the phrase "and will not be considered during the present grant cycle."

- Section 2301.12 is amended by deleting the phrase "return the application to the applicant and" in subparagraph (4).

- Section 2301.12 is amended further by deleting paragraph (b) and renumbering the section accordingly.

- Section 2301.13(a) is amended by deleting the phrase "returning an incomplete application" and inserting in

lieu thereof the phrase "notifying an applicant its application is incomplete."

- Section 2301.13(a) is further amended by deleting the words "or return of an application" and inserting in lieu thereof the words "or determination of incompleteness."

- Section 2301.13 is amended by inserting after paragraph (b) a new paragraph (c) and renumbering former paragraph (c) as paragraph (d). New paragraph (c) provides: "(c) If the Administrator sustains the Agency action, *i.e.*, the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant."

- Section 2301.28(a) is amended by inserting after subparagraph (14)(ii) the following new subparagraph: "(15) Obtain and continue to hold all necessary Commission authorizations."

Furthermore, NTIA has on its own initiative adopted a number of changes which for the most part clarify the rules and need no discussion. These changes are as follows:

- Section 2301.3 is amended by inserting the following definition: " 'Advertisement' means any message or other programming material which is broadcast or otherwise transmitted in exchange for remuneration, and which is intended: to promote any service, facility, or product offered by any person who is engaged in such offering for profit; to express the views of any person with respect to any matter of public importance or interest; or to support or oppose any candidate for political office."

- Section 2301.3 is further amended by deleting the definition of "Federal interest" and inserting in lieu thereof the following definition: " 'Federal interest period' means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of equipment and continues for ten (10) years after the completion of the project."

- Section 2301.12(e) is amended by deleting the phrase "Since the Agency has accepted deferred applications in the prior year, it will not" and inserting in lieu thereof the phrase "The Agency will also".

- Section 2301.(a)(2) is amended by inserting before the period the phrase "to areas not currently receiving such services".

- Section 2301.27 is amended by deleting everything following the colon and inserting in lieu thereof the following phrase: "the grantee continues

¹ Comments were submitted by the following organizations: Austin Community Radio; Bemidji State University; Clark College; Connecticut Educational Telecommunications Corporation; Dade County Public Schools; Dayton Public Radio, Inc.; Dull Knife Memorial College; ETCOM, Inc.; Montanans for Quality Television; National Association of Public Television Stations; National Black Media Coalition; National Federation of Community Broadcasters; National Public Radio; Red Lake Band of Chippewa Indians; Rural California Broadcasting Corporation, and Versatile Video, Inc. Reply Comments were filed by the following organizations: the Corporation for Public Broadcasting; National Public Radio, and the University of Utah.

to meet the conditions attached to the grant as specified in § 2301.28."

- Section 2301.28(a)(4) is amended by deleting the phrase, "during the construction of the project and for ten (10) years after the completion of the project,".

- Section 2301.28(a)(6) is amended by deleting the phrase "at the completion of the project and at any other reasonable time within ten (10) years after the completion of the project".

- Section 2301.28(a)(8) is amended by deleting the words "ten (10) years" and inserting before the semicolon the phrase, "which begins with the purchase of facilities and continues for ten (10) years after the completion of the project".

- Section 2301.28(a)(9) is amended by deleting the phrase "for a period of ten years following the completion of the project".

- Section 2301.28(a)(14)(i) is amended by rewriting the subparagraph to provide: "Execute and record all necessary documents to establish a priority lien in favor of the Federal Government on any facilities purchased with funds obtained under the Act, which would be coextensive with the Federal interest period; and".

- Section 2301.28(a) is further amended by adding two subparagraphs after new subparagraph (15): "(16) Ensure that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any educational program or activity for which the applicant receives funding under the Act (Age Discrimination Act of 1975, as amended);" and "(17) Not make its facilities available to any person for the broadcast or other transmission of any advertisement."

- Section 2301.29 is amended by adding the following new paragraph after paragraph (c): "(d) The Agency shall enforce the Age Discrimination Act of 1975, as amended. Department implementing regulations have not yet been adopted, but will be incorporated by reference upon their adoption."

The additions to § 2301.3 of the definition of "Advertisement" and to § 2301.28 of the provision prohibiting grantees from making PTFP funded facilities available for the transmission of any "advertisement" are necessary for the PTFP rules to conform to section 399B of the Public Telecommunications Financing Act, as added by section 1231 of the Public Broadcasting Amendments of 1981. Pub. L. No. 97-35 1231, 95 Stat. 731 (1981).

NTIA has also rewritten § 2301.30 by changing its title and adding a new paragraph on the termination of grants

for convenience. This new paragraph codifies existing practice within the Agency and provides: "(b) Termination for convenience—When the Agency and the grantee agree that the continuation of the project would not produce beneficial results commensurate with the expenditure of further Federal funds, the parties may terminate the grant, in whole or in part, with any conditions and on an effective date to which the parties have mutually agreed."

One commenter, Rocky Mountain Corporation for Public Broadcasting (Rocky Mountain), suggested that NTIA establish a procedure by which grant applicants might challenge the classification of their applications in the various priorities. In most cases the classification of an application according to the priorities is fairly clear. The area of concern indicated by Rocky Mountain is that involving the penetration of public television signals into geographic areas through cable systems, where the determination as to whether an area is "covered" may have a substantial impact on the funding of a particular project.

NTIA has never permitted any adjudication of its evaluation process as is now being suggested by Rocky Mountain. Because of the delay associated with adjudicatory processes, NTIA does not intend to adopt any such appeals procedure. Nevertheless, we are sensitive to the concern expressed by Rocky Mountain and believe it may (in some measure) be met by allowing applicants to select their own priority. Therefore, in preparing the narrative portion of its application, each applicant should state under which priority it desires NTIA to consider its application. In doing so, each applicant makes sure that its application contains sufficient documentation to justify its qualification under the selected priority. NTIA will then evaluate the application within the selected priority, *unless* the Agency determines that the priority selected by the applicant is not supported by the documentation provided. [Each applicant will be notified of any change in the priority under which its application is to be considered. Such notifications will be in writing and will not be subject to appeal.]

Several commenters also indicated their belief that NTIA should restore the provision in the regulations for geographically equitable distribution of grant funds, formerly contained in § 2301.15. Former § 2301.15 stated that the Administrator had the discretion to "establish limitations on the maximum amount of Federal grants which may be approved . . . to assure an equitable distribution of funds among the States

for any fiscal year." Contrary to the statements of some commenters, former § 2301.15 did not *require* the Administrator to ensure an equitable distribution of funds among the States. Rather, it stated that the Administrator had the *discretion* to do so. In view of the fact that a few Western and Southwestern States have a large proportion of the unserved geographical area in the nation, the language of former § 2301.15 is inconsistent with the primary objective of the Act, namely providing a first public telecommunications service to unserved geographical areas.²

As an ancillary matter, several commenters focused on HTIA's requirement that grantees leasing facilities acquired in whole or in part with Federal funds lease these facilities on a preemptible basis. The National Association of Public Television Stations (NAPTS) stated that such a requirement "would undermine rather than further the intent of Congress . . ." and argued that the "notice requirement of one week is unduly restrictive." NAPTS Comments at pp. 6-7. Similarly, National Public Radio (NPR) stated that "it would be nearly impossible to lease many of the facilities in question, if the lessee were subject to preemption on such short notice." NPR Comments at pp. 3-4. At the same time, however, Versatile Video (Video), an independent video production company, argued that it was unfair for public stations to lease their equipment at less than fair market value and that the preemption requirement would be largely ineffective.³

With regard to these arguments, it must be noted that NTIA does not *require* contracts to be preemptible on one week's notice. Rather, grantees "must retain the right to cancel any [lease] arrangement on *reasonable notice* (e.g., one week), when it appears that the grantee will need the equipment for public telecommunications purposes." 47 FR 11229. (Emphasis added.) NTIA has not established a fixed period for notice, but has left the

² Rocky Mountain also suggested that NTIA restore the provisions in former § 2301.33 relating to petitions for forgiveness. However, NTIA's authority to entertain petitions for forgiveness was based on former language contained in 47 U.S.C. 392(g)(2). In the Public Broadcasting Amendments Act of 1981, Congress deleted this language. Consequently, NTIA is no longer authorized to consider petitions for forgiveness.

³ According to Video, less than fair market value pricing by the public stations was unfair because they have not paid the full cost of acquiring facilities. And the preemption requirement would be ineffective because in long term lease situations it would be unacceptable to lessees and in short term lease situations it would not matter.

determination up to the good faith judgment of the grantee.

Furthermore, the comments of Video suggest that the preemption requirement will not make it impossible for grantees to lease their equipment in short term situations. At the same time, the comments of NPR suggest that the preemption requirement will have the intended effect of lessening the "unfair" competition between independent production companies and NTIA grantees. Consequently, the preemption requirement would seem to adequately meet the needs of the situation—namely, requiring grantees to maintain some degree of access to the equipment without significantly restricting their ability to lease equipment.

II. Priorities

Commenters raised a number of points concerning NTIA's revisions to the priorities list. Many commenting parties expressed their concern over NTIA's inclusion of cable coverage as a criteria in determining the priority of a project. Particularly, they were concerned that NTIA should not consider the extension of public radio signals by cable systems in determining whether an area is "covered." It is NTIA's intention not to include "cable radio" in its determination of whether an area is "covered," because (as many of the commenters pointed out) the portable nature of radio is completely defeated in the context of "cable radio".

With regard to television, commenters have raised two principal arguments against considering additions to coverage by cable systems—namely, the notion of "cost free" service to the public and the fact that cable systems are not generally obligated to carry public television signals. However, in view of the fact that NTIA can and does fund a variety of cable facilities which extend the signals of existing public television stations or originate public television programs themselves, it would be somewhat anomalous for NTIA not to consider these and similar additions to public television coverage in determining whether an area is unserved.

Several commenters have also questioned whether the threshold penetration rate NTIA has selected for considering an area "served" by a public television signal (*i.e.*, 50 percent) is too low and whether it is administratively possible to determine whether a particular area is "served." One commenter has urged that a penetration rate of 50 percent will have a substantial negative impact on the planning and construction of public television stations to serve rural areas.

However, NTIA must question the relative value of planning or constructing a facility to serve an area in which 50 percent (or more) of the population receives a public television signal through a cable system, as compared with an area which receives no public television signal whatsoever. While NTIA recognizes the value of local origination, the Agency has adequately provided for the planning or construction of such facilities in Priority III.

As to the administrative problems in determining whether an area is "served" through a cable system, in the present grant round NTIA has used all available data (data provided by the applicant as well as that obtained by the Agency) to determine whether an area is "served."⁴ While NTIA will continue to generate the necessary figures independently, applicants desiring to plan or construct facilities in areas receiving public television signals by cable should supply documentation to establish the penetration rate in the area.

In its comments, NAPTS suggested that NTIA merge Priority I with Priority II. The reason given for this suggestion was that the replacement of equipment in essential facilities was of equal importance with the extension of signals to new areas. Through this proposal NAPTS seeks to obtain some guarantee as to the availability of funds for the replacement of facilities. While NTIA generally agrees with NAPTS's assessment of the value of the replacement of equipment at essential facilities, NTIA is not required to set aside any amount of available funds for the replacement or improvement of the facilities of existing broadcast stations. Since these stations already exist and have some measure of local support, their ability to maintain a signal to an area (and to obtain locally the monetary support necessary to do so) is inherently greater than stations which have not yet gone on the air or which seek to extend their signals to uncovered areas. Consequently, we have given the highest priority consideration to the latter cases.

Commenters representing minorities, women and radio reading services objected to NTIA's rewriting of former Priority II so as to place "significantly different additional services" in the "Other" category. Some of the commenters noted that projects falling within the "Other" category may be funded by the Administrator even before Priority I projects; however, they argued the discretion to be exercised by

the Administrator was too great and suggested NTIA give these projects a greater certainty of funding—*e.g.*, set aside funds for such projects or return to the language of former Priority II. As we indicated in our revision of the priorities, 47 FR 11229, the planning and construction of facilities to extend public telecommunications signals to uncovered areas and to maintain and improve existing signals is more central to accomplishing the objectives of the Act than projects (planning, construction or improvement) relating to second services. Consequently, we believe that significantly different additional services are adequately provided for under the category of "Other."

Lastly, most commenters opposed NTIA's procedure for expedited funding for applications which the Agency had deferred in the preceding year. Commenters stated that the procedure "could lead to unwarranted and improper political pressure for NTIA to act favorably" on specific deferred applications. Corporation for Public Broadcasting, Reply Comments at 7-8. In operating the PTFP for the last several years, NTIA has heretofore resisted "improper political pressure" and will continue to do so now. We will, therefore, retain the expedited procedure for handling deferred applications.

The PTFP Final Rules described above are not "major" rules within the meaning of section 1 of Executive Order 12291 (1981). E.O. 12291 provides that a major rule is one which is "likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, * * * ; or (3) significant adverse effects on competition, employment, investment, productivity [or] innovation. * * *" NTIA believes it would be very unlikely for grantees to generate \$100 million in annual income from the part-time use of federally funded equipment for other than public telecommunications purposes. NTIA is, therefore, not required to perform a regulatory impact analysis. In addition, NTIA has reviewed the Final Rules in light of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.* (1980), and determined it need not perform a regulatory flexibility analysis as described in 5 U.S.C. 603, because the Final Rules concern a Federal grant-in-aid program and, therefore, are not subject to the notice and comment requirements of 5 U.S.C. 553. Nevertheless, NTIA has attempted in this document to provide the public with

⁴The penetration rate used by NTIA is the number of subscribers vs. the population of the coverage area of the proposed facility.

sufficient information, as described in section 602 of the Regulatory Flexibility Act. As a final matter, pursuant to the Paperwork Reduction Act of Pub. L. No. 96-511 (1980), OMB has reviewed the information collection and record keeping requirements contained in the Final Rules. [OMB Approval No. 0660-0003.]

List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting and recordkeeping requirements, Telecommunications.

(Catalogue of Federal Domestic Assistance No. 11.550)

Dated: November 19, 1982.

Bernard J. Wunder, Jr.,
Administrator.

15 CFR is amended by revising Part 2301 to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—General

Sec.

- 2301.1 Purpose and scope.
- 2301.2 Other pertinent rules and regulations.
- 2301.3 Definitions

Subpart B—Eligibility and Application Procedures

- 2301.4 Who can get a PTFP grant and what can they use it for?
- 2301.5 How do I file an application?
- 2301.6 What happens if my application is incomplete or untimely?
- 2301.7 What if I want to change some of the information in my application?
- 2301.8 Service of applications.
- 2301.9 Publication of filing.
- 2301.10 Closing date.
- 2301.11 Federal Communications Commission authorization.
- 2301.12 What happens after I file an application?
- 2301.13 How can I appeal a denial of eligibility or determination of incompleteness?
- 2301.14 Can members of the public comment on applications?
- 2301.15 What does the Agency do with these comments?
- 2301.16 Coordination with interested agencies and organizations.
- 2301.17 Funding criteria for construction applications.
- 2301.18 Funding criteria for planning applications.
- 2301.19 Action on all applications.

Subpart C—Priorities Among Applications and the Role of Minorities and Women

- 2301.20 Program priorities.
- 2301.21 Special consideration.

Subpart D—Federal Financial Participation

- 2301.22 Amount of the Federal grant.
- 2301.23 Payment of the Federal grant.

Sec.

- 2301.24 Items and costs ineligible for Federal funding.

Subpart E—Accountability for Federal Funds

- 2301.25 Retention of records.
- 2301.26 Copies of planning studies; Final certification of construction projects.
- 2301.27 Annual status report for construction grants.

Subpart F—Control and Use of Equipment

- 2301.28 What conditions are attached to the Federal grant?
- 2301.29 Nondiscrimination.
- 2301.30 How can a grant be terminated?
- 2301.31 Equipment.
- 2301.32 Waiver.

Authority: Public Telecommunications Financing Act of 1978, 47 U.S.C. 390, et seq.; as amended by the Public Broadcasting Amendments Act of 1981.

Subpart A—General

§ 2301.1 Purpose and scope.

These regulations prescribe policies and procedures to insure the fair, equitable and uniform treatment of applications for planning and construction grants for public telecommunications facilities. They implement the provisions of Part IV of Title III of the Communications Act of 1934, as amended by the Public Telecommunications Financing Act of 1978, 47 U.S.C. 390-94 and 397-99, and section 1223 of the Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-35.

§ 2301.2 Other pertinent rules and regulations.

Other rules and regulations pertinent to applications for the operation of noncommercial educational broadcast stations and public broadcast stations are contained in the rules and regulations of the Federal Communications Commission, 47 CFR Part 1 (Practice and Procedure); Part 2 (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations); Part 17 (Construction, Marking, and Lighting of Antenna Structures); Part 3, Subpart E (Television Broadcasting Stations); Part 73 (Radio Broadcast Services); and Part 74 (Experimental Auxiliary and Special Broadcast and Other Program Distribution and Services).

§ 2301.3 Definitions.

"Act" means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390-94 and 397-99, as amended by Pub. L. No. 95-567, and as further amended by Pub. L. No. 97-35.

"Administrator" means the Assistant Secretary for Communications and Information of the Department.

"Advertisement" means any message or other programming material which is broadcast or otherwise transmitted in exchange for remuneration, and which is intended: to promote any service, facility, or product offered by any person who is engaged in such offering for profit; to express the views of any person with respect to any matter of public importance or interest; or to support or oppose any candidate for political office.

"Agency" means the U.S. Department of Commerce or the National Telecommunications and Information Administration of the Department.

"Commission" means the Federal Communications Commission.

"Construction" (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and planning and preparatory steps incidental to any such acquisition, installation or improvement.

"Federal interest period" means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the completion of the project.

"Noncommercial educational and cultural radio and television programs" means educational, community service, public service, public affairs and cultural programs of benefit to the area or community to be served by a public telecommunications entity.

"Noncommercial educational broadcast station" and "public broadcast station" mean a television or radio broadcast station: which is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station under the rules and regulations of the Commission in effect on the effective date of enactment of the Act; and which is owned (controlled) and operated by a public agency or a nonprofit private foundation, corporation or association, or owned (controlled) and operated by a municipality and transmits only noncommercial programs for educational purposes.

"Noncommercial telecommunications entity" means any enterprise: which is owned (controlled) and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation or association; and which has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural

programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave or laser transmission through the atmosphere.

"Nonprofit" (as applied to any foundation, corporation, or association) means a foundation, corporation, or association, no part of the net earning of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Person" means an individual, corporation, foundation, association or institution.

"Preoperational expenses" means all nonconstruction costs incurred by new telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing entities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

"PTFP" means the Public Telecommunications Facilities Program.

"PTFP Program Director" means the Agency employee who recommends final action on public telecommunications facilities grants to the Administrator.

"Public broadcasting entity" means the Corporation for Public Broadcasting, any licensee or permittee of a public broadcasting station, or any nonprofit institution engaged primarily in the production, acquisition, distribution or dissemination of educational and cultural television or radio programs.

"Public telecommunications entity" means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunications services to the public.

"Public telecommunications facilities" means apparatus necessary for production, interconnection, captioning, broadcast or other distribution of programming, including but not limited to, studio equipment, cameras, microphones, audio and video storage or reproduction equipment, or both, signal processors and switches, towers, antennas, transmitters, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, video and audio cassettes and discs, optical fiber

communications equipment and other means of transmitting, emitting, storing and receiving images and sounds or intelligence, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities and similar facilities).

"Public telecommunications services" means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

"Secretary" means the Secretary of the U.S. Department of Commerce.

"State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"System of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Who can get a PTFP grant and what can they use it for?

(a) Eligibility of applicants—In order to apply for and receive a PTFP grant, an applicant must be:

- (1) A public or noncommercial educational broadcast station;
- (2) A noncommercial telecommunications entity;
- (3) A system of public telecommunications entities;
- (4) A nonprofit foundation, corporation, institution or association organized primarily for educational or cultural purposes; or
- (5) A State or local government or agency or a political or special purpose subdivision of a State.

(b) Eligibility of projects—An applicant which is eligible under subsection (a) above, may file an application with the Agency for a planning or construction grant to achieve the following:

- (1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;
- (2) The expansion of the service areas of existing public telecommunications entities into areas not currently receiving public telecommunications services;

(3) The development of public telecommunications facilities owned by, operated by, or available to minorities and women; and

(4) The improvement of the capabilities of existing public broadcast stations to provide public telecommunications services.

(c) In addition any applicant, whose proposal requires an authorization from the Commission, must be eligible to receive such authorization.

(d)(1) If a prospective applicant is unsure whether it is eligible to receive a PTFP grant or whether its proposed project is eligible for PTFP funding, the prospective applicant may seek a determination from the Agency at any time, except during the period between the closing date for the filing of applications and the publication by the Agency of the list of applications which the Agency has accepted for filing.

(2)(i) To obtain an eligibility determination from the Agency, a prospective applicant must send a letter requesting an eligibility determination to the PTFP Program Director, NTIA/DOC, Room 4625, Washington, DC 20230.

(ii) In this letter the prospective applicant must:

- (A) Describe the proposed project;
- (B) Include a copy of the organization's articles of incorporation, or other similar documentation, which specifies the nature and powers of the prospective applicant; and

(C) If the prospective applicant is a nonprofit foundation, corporation, institution or association, provide a copy of a letter from the Internal Revenue Service granting the prospective applicant tax exempt status under section 501(c)(3), of the Internal Revenue Code, or other similar documentation.

(3) A favorable eligibility determination does not guarantee that the Agency will accept an application for filing or award a grant.

(4) An applicant may appeal an unfavorable eligibility determination to the Administrator under § 2301.13.

§ 2301.5 How do I file an application?

(a) *New applications.* To apply for a PTFP grant an applicant must file a *timely* and *complete* application on a form approved by the Agency. A prospective applicant may obtain an approved Agency application form from the Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, Washington, D.C. 20230.

(1) To file a *timely* application an applicant must file an application on or before the closing date set for the filing of applications by the Administrator

under § 2301.10 of the rules. The application must:

(i) Be addressed to the Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, Washington, D.C. 20230;

(ii) If mailed, be postmarked no later than midnight of the closing date; and

(iii) If hand delivered, be received no later than 4:30 p.m. on the closing date.

(2) To file a *complete* application, the applicant must submit an original and one copy of the assurances and other information described below:

(i) Assurances—

(A) The applicant is an eligible entity, as described in section 2301.4 of the rules;

(B) The applicant will control the operation of, and maintain, any public telecommunications facilities obtained with PTFP funds;

(C) The applicant will have when needed the necessary funds to construct any public telecommunications facilities for which the Agency has granted matching funds, and to operate and maintain those facilities once constructed;

(D) The applicant will use PTFP funded facilities and any monies generated through the use of PTFP funded facilities primarily for public telecommunications purposes;

(E) The applicant has participated (or, in the case of a planning grant, will participate) in comprehensive planning for such public telecommunications facilities, including community involvement, an evaluation of alternate technologies and coordination with State telecommunications agencies, if any;

(F) The applicant has taken into account all non-Federal financial sources available for the project and the non-Federal share stated by the applicant as being available for use in this project is the maximum amount available from such sources;

(G) The applicant will make the most economical and efficient use of the grant;

(H) The applicant will hold appropriate title or lease to the site on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect and remove such apparatus, sufficient to assure the continuity of operation for a period of ten (10) years following the completion of the project; and

(I) The applicant will not use or allow the use of any PTFP funded facilities for other than public telecommunications purposes when such uses would interfere with the use of the facilities for the provision of public telecommunications services;

(ii) Other information—

(A) The original signature of an officer of the applicant, who is legally authorized to sign for the applicant;

(B) A brief narrative statement (of not more than four (4) pages) describing the proposed project;

(C) A copy of the applicant's articles of incorporation, by-laws and other similar documentation specifying the nature and powers of the applicant;

(D) If the applicant is a nonprofit foundation, corporation, institution or association, a copy of a letter from the Internal Revenue Service granting the applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other similar documentation of nonprofit status;

(E) A copy of any environmental impact or narrative statement required to be filed in connection with the proposed project by any Federal, State or local law or regulation;

(F) If the application is for a construction project, a five (5) year plan outlining the applicant's projected facilities requirements and the projected costs of those facilities;

(G) If the application is for a construction project, information relating to the applicant's evaluation of alternate technologies available in the service area and the extent to which there is no duplication of services;

(H) An inventory of all public telecommunications facilities (if any) currently owned by the applicant;

(I) If special consideration is requested under section 392(f) of the Act, information detailing the basis for the request;

(J) A statement by the applicant certifying that the applicant has served copies of its application on each of the entities required under § 2301.8 of this part with a copy of the letters transmitting the application to the entities served;

(K) A statement by the applicant certifying that the applicant is causing to be published in a newspaper of general circulation in the community to be served the notice required in § 2301.9 of the rules and two copies of the notice as it is to appear in the newspaper with notations of the dates on which the notice is to be published;

(L) An opinion letter from the applicant's attorney stating that the applicant has fee simple title or a long-term lease (e.g., a ten-year lease) to any real property necessary for the installation of major fixed equipment (such as a broadcast transmitter or tower);

(M) Meaningful documentation supporting the applicant's request for equipment to render the proposed

service (e.g., if an applicant seeks a grant for local production equipment, the applicant should supply documentation indicating its intent to engage in local production); and

(N) Current information concerning any discrimination complaints filed against it before any governmental agency.

(b) *Deferred applications.* (1) An applicant may reactivate an application deferred by the Agency during the prior year under § 2301.19, if the applicant has not substantially changed the stated purpose of the application.

(2) To reactivate a deferred application, the applicant must file a written request with the Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, Washington, DC 20230. The request must be *timely* and *complete*.

(i) To file a *timely* request, an applicant must file the request on or before the date established as the closing date for the filing of applications under § 2301.10 of the rules. The request must:

(A) Be addressed to the Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, Washington, DC 20230;

(B) If mailed, be postmarked no later than midnight of the closing date; and

(C) If hand delivered, be received no later than 4:30 p.m. of the closing date.

(ii) To file a *complete* request, the applicant must submit an original and one copy of the following:

(A) Sections I, II, III and IV of Part I of the approved Agency application form with the original signature of an officer of the applicant, who is legally authorized to sign for the applicant, a notation of the file number of the earlier application and the current filing date of the amendment;

(B) A brief narrative statement (not more than four (4) pages) describing the proposed project submitted on the current application form;

(C) An update of availability of operating funds and the necessary non-Federal share of the project;

(D) A revised listing of current eligible project costs, if necessary;

(E) A revised inventory of all public telecommunications facilities currently owned by the applicant (applicants having previously submitted an inventory need only submit updating information);

(F) If the application is for a construction project, a revised five (5) year plan outlining the applicant's projected facilities requirements, and the projected costs of such facilities (applicants having previously submitted

a five (5) year plan may submit any approved amendments, including updating the dates to include the current year);

(G) Current information relating to the applicant's evaluation of alternate technologies available in the service area and the extent to which there is duplication of services;

(H) If special consideration is requested under section 392(f) of the Act, current information detailing the basis for the request;

(I) A statement by the applicant certifying that the applicant has served copies of its reactivated application on each of the entities required under § 2301.8 of this part with a copy of the letters transmitting the application to the entities served; and

(J) Current information concerning any discrimination complaints filed against it before any governmental agency.

(c) *Additional Information.* (1) The Agency may request from the applicant any additional information which the Agency deems necessary or pertinent.

(2) Applicants must promptly provide any additional information which the Agency requests as being necessary or pertinent.

§ 2301.6 What happens if my application is incomplete or untimely?

(a) *Incomplete applications.* Under § 2301.7 of the rules, applicants have 45 calendar days after the closing date to amend their applications. At the end of that period, the Agency will return any application which it has found to be incomplete.

(b) *Untimely applications.* The Agency will return any application, substantial amendment to an application or request to reactivate a deferred application which is filed after the closing date.

(c) Applicants, whose applications the Agency returns as being incomplete, may appeal the action to the Administrator under § 2301.13.

Applicants, whose applications the Agency returns as being untimely, may not appeal the Agency's action.

§ 2301.7 What if I want to change some of the information in my application?

(a) An applicant, which has filed a timely, but incomplete, application (or request seeking renewed consideration of a deferred application), may submit minor amendments to its application (or request) or submit additional information at any time up to 45 calendar days after the closing date for the filing of applications.

(b) An applicant, which has filed a timely application (or request), must

amend its application to update information concerning any discrimination complaints filed against it before any governmental agency.

(c) To amend its application, an applicant must submit an original and one copy of the following to the address specified in § 2301.5(a)(1) above:

(1) A letter describing in detail the amendment which the applicant is making to its application;

(2) Any new material or altered material; and

(3) A certification that it has filed a copy of the notice on each of the entities required under § 2301.8.

(d) Applicants may not submit substantial amendments to their applications (amendments which substantially change the nature or scope of the proposed project) after the closing date.

(e) Applicants, which have deferred applications on file with the Agency may submit substantial amendments to their deferred applications at any time after the publication of the notice of closing date in the *Federal Register* and before the closing date. These applicants must comply with the service and publication requirements of §§ 2301.8 and 2301.9, respectively.

§ 2301.8 Service of applications.

On or before the closing date, an applicant, which files an application, a request seeking renewed consideration of a deferred application or a substantial amendment to an application with the PTFP, must serve a copy of its application, request or substantial amendment and any subsequent amendment(s) of the application on:

(a) The State or local agency (if any) having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the State and the community to be served by the proposed projects;

(b) In the case of an application for a construction grant for which Commission authorization is necessary, the Secretary, Federal Communications Commission, Washington, DC 20554;

(c) The State telecommunications agency (if any) in the State in which the channel associated with the project is assigned by the Commission, or if the channel in question is assigned jointly to communities in different States, the State agency (if any) in each of the States concerned;

(d) The State telecommunications agency (if any) in any State, any part of which is located within the service area of the proposed facility; and

(e) The State clearinghouse(s) required to be served under Office of Management and Budget Circular A-95.

§ 2301.9 Publication of filing.

On or before the closing date, an applicant, which files an application or a substantial amendment to a deferred application with the PTFP, must cause to be published in a newspaper of general circulation in the community(ies) to be served, a notice that it has filed an application or a substantial amendment to a deferred application which has been reactivated. (Applicants seeking to reactivate a deferred application under § 2301.5(b) above, need not publish the notice required under this section.)

(a) The notice must contain:

(1) The name of the applicant;

(2) The address of applicant's office where a copy of the application is available to the public;

(3) A brief description of the proposed project; and

(4) The address to which commenting parties should send their comments: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, Washington, DC 20230.

(b) The notice must be published once a week for two consecutive weeks.

(c) The applicant must submit two copies of the notice as it is to appear in the newspaper to the Agency (at the address provided in paragraph (a)(4) of this section) with notations of the dates on which the notice is to be published.

§ 2301.10 Closing date.

The Administrator shall select and publish in the *Federal Register* a date by which applications for funding in a current fiscal year are to be filed.

§ 2301.11 Federal Communications Commission authorization.

(a) Each applicant whose project requires Commission authorization must file an application for that authorization on or before the closing date for filing of PTFP applications.

(b) Any Commission authorization required for the project must be in the name of the applicant for the PTFP grant.

(c) If the project is to be associated with an existing station, Commission operating authority for that station must be current and valid.

(d) For any project requiring a new authorization or authorizations from the Commission, the applicant must file with the Agency a copy of each Commission application and any amendments thereto.

(e) If the applicant fails to file the required Commission application or applications by the closing date established pursuant to § 2301.10 of these rules, or if the Commission returns, dismisses or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may return the application for Federal financial assistance to the applicant.

(f) No grant will be awarded until confirmation has been received from the Commission that any necessary authorization will be issued.

§ 2301.12 What happens after I file an application?

After the closing date, the Agency will examine each application for timeliness, completeness, eligibility and Commission authorization.

(a) If the Agency finds that an application is untimely, it will return the application to the applicant and inform the applicant that its application was untimely and will not be considered during the present cycle.

(b)(1) If the Agency finds that an application is incomplete, it will hold the application for 45 calendar days after the closing date to allow the applicant to complete the application.

(2) If, after 45 calendar days the application is still incomplete, the Agency will promptly inform the applicant that its application is incomplete.

(c) When the Agency finds that either the applicant or the project is ineligible, it will promptly inform the applicant that it or its proposed project is ineligible.

(d) If the Agency finds that a proposed project requires authorization from the Commission and that the applicant did not tender its application for Commission authorization *on or before the closing date*, the Agency will return the application. In returning an application under this subsection, the Agency will inform the applicant that the Agency cannot consider the applicant's application for a grant during the present grant cycle, because the applicant did not file an application for authority with the Commission *on or before the closing date*.

(e) The Agency will accept for filing all other applications by publishing a notice in the *Federal Register* listing each application and substantial amendment to an application. The Agency will also include requests to reactivate deferred applications in its acceptance for filing list. Acceptance of an application for filing does not preclude subsequent return or

disapproval of an application, if it is found to be not in accordance with the provisions of this part, or if the applicant fails to file any additional information requested by the Agency. Acceptance for filing does not assure that any particular application will be funded, but merely qualifies that application to compete for funding with other applications accepted for filing.

§ 2301.13 How can I appeal a denial of eligibility or determination of incompleteness?

(a) Within 15 calendar days after the date on which the Agency sends a written notice to an applicant denying the eligibility of the applicant or the applicant's project, or notifying an applicant that its application is incomplete, the applicant may file a written notice of appeal with the Administrator. The notice of appeal must contain a statement by the applicant showing its basis for appealing the Agency's action—*i.e.*, showing that the denial of eligibility or determination of incompleteness is factually or legally incorrect. (If the applicant relies on any written documents or other materials to refute the Agency's action, the applicant should list each item and attach a copy of each item or indicate that the Agency has a copy of the item in its possession.)

(b) Upon receipt of the notice of appeal, the Administrator will review the appeal in consultation with the Chief Counsel and the PTFP Program Director and will render a decision within 30 calendar days.

(c) If the Administrator sustains the Agency action, *i.e.*, the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant.

(d) All decisions of the Administrator made under paragraph (b) of this section are final.

§ 2301.14 Can members of the public comment on applications?

(a) Any interested party may file comments with the Agency supporting or opposing an application or substantial amendment to an application, setting forth the grounds for support or opposition, accompanied by a certification that a copy of the comments has been mailed (or otherwise provided) to the applicant. Persons commenting on applications must send their comments to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, Washington, DC 20230.

(b) Persons filing comments on applications must do so:

(1) After the applicant files its application with the PTFP; and

(2) Within 15 calendar days after the Agency publishes a notice of acceptance of applications in the *Federal Register*, as described in § 2301.12(a)(5).

(c) Within 45 calendar days after the Agency publishes a notice of acceptance of applications in the *Federal Register*, an applicant may file a reply to any comments opposing its application or its substantial amendment to an application.

(d) The time periods referred to in paragraphs (a) and (b) of this section may be extended by the Administrator if good cause is shown.

§ 2301.15 What does the Agency do with these comments?

(a) The Agency will incorporate all comments from the public and any replies to those comments from an applicant in the application official file.

(b) An applicant or an objecting party may not appeal to the Administrator the determination of the Agency to grant or not grant a particular application.

§ 2301.16 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult with:

(a) The Commission, with respect to functions which are of interest to or affect functions of the Commission;

(b) The Corporation for Public Broadcasting, with respect to functions which are of interest to or affect the functions of the Corporation;

(c) Other agencies, organizations and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act; and

(d) State clearinghouse(s) described in Office of Management and Budget Circular A-95.

§ 2301.17 Funding criteria for construction applications.

In determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5;

(b) The priorities set forth in § 2301.20;

(c) The adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area;

and the availability of necessary funds for capital expenditures;

(d) The extent to which non-Federal funds will be used to meet the total cost of the project;

(e) The extent to which the applicant has:

(1) Evaluated alternate technologies, the bases upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available;

(2) Provided meaningful documentation of the applicant's equipment requirements;

(3) Provided meaningful documentation of community support for the service to be provided (such as letters from agencies for whom the applicant produces or will produce programs or other materials and from key elected/appointed policy-making officials);

(f) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned (or controlled) by minority and women;

(g) The extent to which the various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(h) The extent to which the eligible equipment requested meets current telecommunications industry performance standards;

(i) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(j) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(k) The extent to which the project implements local, Statewide or regional public telecommunications systems plans, if any;

(l) The extent to which the applicant's proposed five (5) year facilities plan required by section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations; and

(m) The readiness of the Commission to grant any necessary authorization.

§ 2301.18 Funding criteria for planning applications.

In determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or

whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5;

(b) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(c) The qualifications of the proposed planner to provide a public telecommunications facilities plan;

(d) The extent to which the planning project's proposed procedural design assures that the applicant would obtain adequate:

(1) Financial human and support resources necessary to conduct the plan;

(2) Coordination with other telecommunications entities at the local, State, regional and national levels;

(3) Evaluation of alternate technologies and existing services; and

(4) Participation by the public to be served (and by minorities and women in particular) in the planning of the project;

(e) The extent to which the applicant has engaged in pre-planning studies to determine the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary for the project); and

(f) The extent to which the proposed procedure and timetable are feasible and can achieve the expected results.

§ 2301.19 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments and replies filed by interested parties and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration pursuant to § 2301.5; or

(3) Return the application to the applicant with a notice of the grounds and reasons therefor.

(b) Upon the Agency's approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each State educational television, radio or telecommunications agency, if any, in any State, any part of which lies within the service area of the applicant's facility;

(3) The Commission; and

(4) The Corporation for Public Broadcasting.

(c) If the Agency awards a grant, the grant award document will include grant

terms and conditions set forth in Subpart D of the Rules and whatever other provisions are required by Federal law or regulations, or may be deemed necessary or desirable for the achievement of the purposes of the program.

Subpart C—Priorities Among Applications and the Role of Minorities and Women

§ 2301.20 Program priorities.

(a) The following criteria, listed in order of priority, shall govern the Agency's determination to fund an application and the amount of the grant awarded:

(1) Whether the application will provide new public telecommunications facilities to extend service to areas not currently receiving such services.

(2) Whether the application will result in the expansion of the service areas of existing public telecommunications entities to areas not currently receiving such services.

(3) Whether the application will result in the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services.

(b) Notwithstanding the priorities among applications listed in paragraph (a) of this section, the Agency may utilize appropriated funds to award grants to applicants who are otherwise eligible for funding, but do not fall within any of the priorities listed in paragraph (a) of this section. Grants made pursuant to this subsection must fulfill the overall objectives of the Act.

§ 2301.21 Special consideration.

In assessing applications, the Agency will give special consideration to applications which foster control of, operation of, and participation in public telecommunications entities by minorities and women.

Subpart D—Federal Financial Participation

§ 2301.22 Amount of the Federal grant.

(a) *Planning grants.* A Federal grant award for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the grant award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications facility which is eligible for construction grant funding.

(b) *Construction grants.* (1) A Federal grant award for the construction of a public telecommunications facility shall

be an amount determined by the Agency and set forth in the grant award document, except that such amount shall not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal Government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(c) If the actual costs incurred in completing the planning or construction project are less than the estimated project costs, which were the basis for the Agency's determination of the initial grant award, the Agency shall reduce the amount of the final grant award so that the final grant award bears the same ratio to the actual cost of the project as the initial grant award bore to the estimated total project costs. In no case will the final grant award exceed the initial grant award.

(d) Project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the effective date of acceptance for filing of the application, and services related thereto. NTIA will specify the effective date of the acceptance for filing in the Federal Register notice required under § 2301.12 of the rules. This date will not be earlier than the date on which the applicant first filed the application with the Agency.

§ 2301.23 Payment of the Federal grant.

(a) The Agency will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this part. Additionally, with regard to a public telecommunications entity requiring Commission authorization, the Agency will not make any payment until it receives confirmation from the Commission that the Commission has granted any necessary authorization.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, the Agency will make payment to the grantee in such installments consistent with the percentage of project completion, as the Agency may determine. (As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.)

(c) When an applicant completes a construction project, the Agency will assign a completion date which the Agency will use to calculate the termination date of the Federal interest period. (The completion date will be the date on which the grantee certifies that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.26. If the PTFP Program Director determines that the grantee improperly certified the project to be complete, the PTFP Program Director will amend the completion date accordingly.)

§ 2301.24 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under the Act:

(a) *Equipment and supplies.* (1) Vehicles, including those in which mobile equipment is mounted or carried;

(2) Receiving equipment (except as required by good engineering practices for monitoring the origination or transmission of signals; vertical interval or subcarrier receivers and decoders; or satellite receivers);

(3) Modifying or strengthening the applicant's tower to accommodate antennas of commercial entities;

(4) Equipment for motion picture or still photography or processing;

(5) Manual film or tape editing equipment, film, recording tape, reels, film or tape cleaning equipment;

(6) Scenery and props, art supplies and equipment;

(7) Sound insulation devices, cycloramas, draperies, studio clocks, blackboards, intercoms, telephones, furniture, and the like;

(8) Production devices such as prompting systems, background projection systems, sound effects, and the like;

(9) Office equipment, printing and duplication supplies; except for planning projects under section 392(c) of the Act;

(10) Maintenance equipment such as hand and power tools, storage cabinets and maintenance services;

(11) Air conditioning for control or equipment rooms, studios, transmitter buildings, mobile units and other operational rooms and offices (except that the cost to provide ventilation of project apparatus as is required by good engineering practice is an eligible installation cost);

(12) Equipment providing power to the facility, including transformers, regulators, generators, and related equipment;

(13) Expendable items, including spare recording heads, spare lenses, spare circuit components and other kits

normally considered spares except for transmitters; and

(14) Such other equipment and supplies as the Agency may determine prior to the award of a grant.

(b) *Other Expenses.* (1) Buildings and modifications to buildings to house eligible equipment are not themselves eligible for funding under this program, except, that small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities and similar facilities are eligible for funding.

(2) Land and land improvements;

(3) Salaries and personnel employed by an operating public telecommunications entity, except for planning projects under section 392(c) of the Act, and for construction-related activities as defined in section 397(l) of the Act and § 2301.3 of the rules;

(4) Moving costs required by relocation; and

(5) Such other expenses as the Agency may determine prior to the award of a grant.

Subpart E—Accountability for Federal Funds

§ 2301.25 Retention of records.

(a) Each recipient of assistance under this program shall keep intact and accessible the following records:

(1) A complete and itemized inventory of all public telecommunications facilities under the control of the grantee, whether or not financed, in whole or in part, with Federal funds;

(2) Complete, current and accessible financial records which fully disclose the total amount of the project; the amount of the grant; the disposition of the grant proceeds; and the amount, nature and source of non-Federal funds associated with the project;

(3) All records specified in Office of Management and Budget Circulars A-102 (for State and local governments) and A-110 (educational institutions, hospitals and nonprofit organizations).

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records.

§ 2301.26 Copies of planning studies; final certification of construction projects.

(a) Upon the completion of a planning project, the grantee must promptly provide to the Administrator two copies of any study conducted in whole or in part with funds provided under this program by sending the copies to the Public Telecommunications Facilities

Program, NTIA/DOC, Room 4625, Washington, DC 20230.

(b) Upon completion of a construction project, the grantee must:

(1) Certify that the grantee has completed the acquisition and installation of the project equipment in accordance with the project as approved by the Agency;

(2) Certify that the grantee has obtained any necessary Commission authorizations to operate the project apparatus following the acquisition and installation of the apparatus;

(3) Certify that the facilities are in operating order and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency; and

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty.

§ 2301.27 Annual status report for construction grants.

For construction projects, the grantee must file with the Agency during the ten (10) year period commencing with the date of completion of a project, an annual status report on or before each April 1 following completion of the project, certifying that the grantee continues to meet the conditions attached to the grant as specified in § 2301.28.

Subpart F—Control and Use of Facilities

§ 2301.28 What conditions are attached to the Federal grant?

When an applicant is awarded a Federal grant under the PTFP, the applicant (now the grantee) takes the grant subject to certain conditions concerning the use of the Federal monies and the equipment obtained with those monies. These conditions are:

(a) During the construction of a project and the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.4;

(2) Use the Federal grant funds for the purposes for which the grant was made and for the items of apparatus and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the Agency;

(3) Promptly complete the project and place the public telecommunications facility into operation;

(4) Maintain protection against common hazards through adequate

insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project;

(5) Permit the Agency and the Comptroller General of the United States or their duly authorized representatives access for the purpose of audit and examination of any books, documents, papers and records of any grantee that are pertinent to assistance received under this program;

(6) Permit inspections during normal working hours by the Agency and the Comptroller General of the United States or their duly authorized representatives, of the public telecommunications facilities acquired with Federal financial assistance;

(7) Comply with the provision of the Office of Management and Budget Circulars A-102 (for State and local governments) and A-110 (for institutions of higher education, hospitals and other nonprofit organizations) for the procurement of equipment and services funded in whole or in part with Federal monies;

(8) In advertising for bids for the purchase of apparatus, shall state that the Federal Government has an interest in facilities purchased with Federal funds under this program which begins with the purchase of the facilities and continues for ten (10) years after the completion of the project;

(9) Hold appropriate title or lease to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect and remove such apparatus, sufficient to assure continuity of operation of the facility;

(10) Ensure that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination under any program or activity for which the applicant receives funding under this Act (Title VI of the Civil Rights Act of 1964 as implemented by Department regulations, 15 CFR Subtitle A, Part 8);

(11) Ensure that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any educational program or activity for which the applicant receives funding under the Act (Title IX of the Education Amendments of 1972, as amended);

(12) Ensure that no otherwise qualified individual shall, solely by reason of handicap, be excluded from the participation in, be denied the

benefits of or be subjected to discrimination under any program or activity for which the applicant receives funding under this Act (section 504 of the Rehabilitation Act of 1973, as amended);

(13) Use the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(14)(i) Execute and record all necessary documents to establish a priority lien in favor of the Federal Government on any facilities purchased with funds obtained under the Act, which would be coextensive with the Federal interest period; and

(ii) File a certified copy of the recorded lien with the Agency;

(15) Obtain and continue to hold any necessary Commission authorization(s);

(16) Ensure that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any educational program or activity for which the applicant receives funding under the Act (Age Discrimination Act of 1975, as amended);

(17) Not make its facilities available to any person for the broadcast or other transmission of any advertisement.

(b) During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian.

§ 2301.29 Nondiscrimination.

(a) The Agency shall enforce Title VI of the Civil Rights Act of 1964, as implemented by Department regulations, 15 CFR Subtitle A, Part 8.

(b) The Agency shall enforce Title IX of the Education Amendments of 1972, as amended. Department implementing regulations have not yet been adopted, but will be enforced upon their adoption.

(c) The Agency shall enforce section 504 of the Rehabilitation Act of 1973, as amended. Department implementing regulations have been proposed, 43 FR 53765, published November 17, 1978. Final regulations will be enforced when adopted.

(d) The Agency shall enforce the Age Discrimination Act of 1975, as amended. Department implementing regulations

have not yet been adopted, but will be enforced when adopted.

§ 2301.30 How can a grant be terminated?

(a) Termination for cause—If a grantee fails to meet any condition attached to the grant, as specified in § 2301.28, the Agency may take any appropriate action including, but not limited to:

(1) Suspending a particular grant and withholding further the payments under that grant, pending corrective action by the grantee;

(2) Prohibiting a grantee from incurring additional obligations of funds, pending corrective action by the grantee;

(3) Where the grantee cannot (or will not) comply with the condition (or conditions) attached to a particular grant, terminating the grant and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grant bore to the project;

(4) Where the condition (or conditions) is also attached to other grants which the grantee has received from the Agency, suspending payments under all these other grants; and

(5) Where the condition (or conditions) is also attached to other grants which the grantee has received from the Agency, terminating all these other grants and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grants bore to the projects for which they were granted.

(b) Termination for convenience—When the Agency and the grantee agree that the continuation of the project would not produce beneficial results commensurate with the expenditure of further Federal funds, the parties may terminate the grant, in whole or in part, with all conditions and on an effective date to which the parties have mutually agreed.

§ 2301.31 Equipment.

All equipment, which a grantee acquires under this program, shall be of professional quality. An applicant proposing to utilize non-broadcast technology shall propose and purchase equipment which is compatible with

broadcast equipment wherever the two types of apparatus interface.

§ 2301.32 Waiver.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act.

Appendix A

Note.—Appendix A will not appear in the Code of Federal Regulations.

Priority I—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area. Within this category, we establish two subcategories:

A. Projects which include local origination capacity. This category includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. Projects which do not include local origination capacity. This category includes projects such as increase in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Facilities. Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast facilities which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

Priority III—Establishment of First Local Origination Capacity in a Geographic Area. Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters and cable systems.

Priority IV—Replacement and Improvement of Basic Equipment for

Existing Broadcast Facilities. Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., conversions to color, stereo, etc.; improvements to signal quality and significant improvements in equipment flexibility or reliability).

Priority V—Augmentation of Existing Broadcast Station Facilities. Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities. An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution. This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases. In any fiscal year, NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals do not clearly fall within any of the listed priorities but whose applications, by virtue of their unique or innovative nature, would further the overall objectives of the Act. Such projects include, among other things, the planning and construction of facilities to provide significantly different additional services for which a clear and substantial community need can be demonstrated (e.g., first in-State facility with local origination capacity, service to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text).

[FR Doc. 82-32286 Filed 11-24-82; 8:45 am]

BILLING CODE 3510-60-M

Federal Register

**Friday
November 26, 1982**

Part VI

**Environmental
Protection Agency**

**Modification of Secondary Treatment
Requirements for Discharges Into Marine
Waters; Final Rule**

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Parts 124 and 125****(OW-FRC 2221-6)****Modification of Secondary Treatment
Requirements for Discharges Into
Marine Waters****AGENCY:** Environmental Protection
Agency.**ACTION:** Final rule.

SUMMARY: EPA is today promulgating final amendments to regulations that implement section 301(h) of the Clean Water Act. Section 301(h) provides for modifications of secondary treatment requirements for discharges into marine waters by publicly owned treatment works (POTWs) which demonstrate their compliance with the 301(h) criteria. These amendments are necessary to clarify, simplify, and update the section 301(h) regulations and application requirements. These amendments supplement and amend final 301(h) regulations previously published in the *Federal Register* on June 8, 1982.

EFFECTIVE DATE: These regulations take effect on December 27, 1982, except for changes in information requirements from the proposed regulations, which are not effective until OMB approval under the Paperwork Reduction Act is obtained. The changes subject to such approval appear in 40 CFR 125.64(a)(2) (industrial user survey portion only), Questions II.B.4.a. of Part 125, Appendix A, the Small Applicant Questionnaire and II.B.5.a. of Part 125, Appendix B the Large Applicant Questionnaire (fecal coliform portions only), and Question III.E.2. of Appendices A and B the Small and Large Applicant Questionnaires (fecal coliform portions only).

FOR FURTHER INFORMATION CONTACT: Paul Pan, Acting Director, Office of Marine Discharge Evaluation (WH-546), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9231.

SUPPLEMENTARY INFORMATION:**I. Background**

Under section 301(b)(1)(B) of the Clean Water Act (CWA), 33 U.S.C. 1311(b)(1)(B), POTWs were required to achieve secondary treatment by July 1, 1977. Congress amended the CWA in 1977 to add section 301(h), 33 U.S.C. 1311(h), which provides that the Administrator, upon application by a POTW and with the concurrence of the State, may issue a National Pollutant Discharge Elimination System (NPDES) permit which modifies the secondary

treatment requirements of section 301(b)(1)(B). In order to obtain such a modification, the modified discharge must be into certain marine or estuarine waters and the applicant must demonstrate to the satisfaction of the Administrator that the proposed discharge will comply with the section 301(h) criteria.

On June 15, 1979, EPA promulgated regulations implementing section 301(h) of the CWA at 44 FR 34784 (1979 Regulations). Those regulations were challenged in the U.S. Court of Appeals for the District of Columbia Circuit. As a result, the Court invalidated three provisions of the 1979 Regulations in *Natural Resources Defense Council, Inc. v. EPA*, 656 F.2d 768 (D.C. Cir., 1981). Subsequent to the Court's decision, the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (MWTCGA), enacted on December 29, 1981, amended section 301(h) in several respects. Pub. L. 97-117, 95 Stat. 1623. EPA thereafter promulgated final and immediately effective amendments to the section 301(h) regulations to implement the Court's decision and the statutory changes (47 FR 24918, June 8, 1982). The preamble to those final amendments explains the lawsuit results, statutory changes, and regulatory amendments.

On June 8, 1982, EPA also published proposed amendments to the section 301(h) regulations. 47 FR 24921. As explained in that preamble, the proposed amendments reflected EPA's experience in implementing the section 301(h) program and were responsive to the President's directive to reduce the burden of government regulations. The proposed amendments were intended to make the regulations simpler, clearer, and more flexible. Finally, the proposed amendments reflected EPA's tentative response to a September 11, 1981, rulemaking petition from the Pacific Legal Foundation (PLF) to amend the section 301(h) regulations. A tentative response to PLF's petition was included in a letter sent to PLF at the time of the proposed amendments. In the preamble to the proposed amendments, EPA solicited comments on both PLF's rulemaking petition and EPA's tentative response.

The preamble to the proposed amendments also notified the public of the availability of a Draft Revised Section 301(h) Technical Support Document (Technical Support Document) and solicited comments on it. That document explained the technical basis for the proposed regulatory amendments and contained advisory guidance on how applicants could develop necessary information and

respond to the application questionnaires contained in the proposed regulation. In addition, EPA also made available for public comment a draft document entitled Design of 301(h) Monitoring Programs for Municipal Wastewater Discharges to Marine Waters (Monitoring Document) which contained advisory information on how applicants could develop monitoring programs required by proposed § 125.62.

EPA held public meetings on the regulatory amendments in Seattle, San Francisco, Boston, the New York area, and Miami. The purpose of these meetings was to help the public understand the regulatory and statutory amendments and thereby facilitate the public's submission of written comments on the proposed regulations. Tapes from the public meetings are part of the public record and are available for use at the address given above.

The public comment period closed on August 9, 1982. EPA received 15 timely comments from municipalities, organizations, and agencies on the proposed amendments. Additional comments were received within several days of the close of the public comment period. Because evaluating these late comments did not delay promulgation of the final regulations, EPA has elected to respond to them.

No public comments were received on PLF's rulemaking petition and EPA's tentative reply. One comment was received on the Monitoring Document which stated that the monitoring procedures should be adhered to and endorsed the use of in situ bioassays and monitoring of the areal extent of kelp beds adjacent to a POTW. One comment was also received on the Technical Support Document which pointed out that the formula for oxygen depletion (p. VI-39 of the draft document) results in oxygen depletion being expressed in micrograms per liter instead of milligrams per liter. The formula has been adjusted accordingly in the final document.

EPA has now finalized the Technical Support and Monitoring Documents. They are available to the public by contacting EPA at the address given above. As stated in the preamble to the proposed amendments, these documents are advisory in nature but will provide potential applicants with valuable guidance on responding to the mandatory application questionnaires which are set forth as Appendices A and B to these final amendments. Concurrent with promulgation of these regulations, EPA has sent PLF a final reply to its rulemaking petition which is

also available by contacting EPA at the above address.

Some comments addressed provisions in the 1979 Regulations that were not reopened in this rulemaking. Issues pertaining to those provisions were fully aired in 1979 and EPA has no legal obligation to respond to comments on them now. Nevertheless, EPA has listed these comments and either responded to them or referred to the preamble of the 1979 Regulations.

Section II of the preamble provides a brief, section-by-section analysis of the final regulations, indicating which sections were the subject of public comments and where changes to the proposed regulations were made as a result. The substance of all comments received, as well as EPA's responses, are discussed in Sections III and IV. Because the preamble to these final regulations discusses only the public comments and EPA's responses thereto, readers should also refer to the preamble of the proposed regulations (47 FR 24921) for a full explanation of the amendments. Section V of the preamble discusses compliance with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

II. Section by Section Analysis

Section 125.56: This section establishes the general scope and purpose of the 301(h) regulations. No comments were received on this section and it remains unchanged from the proposal.

Section 125.57: This section remains unchanged from the proposal and sets forth the statutory language applicable to section 301(h) modified permits, including the statutory amendments enacted on December 29, 1981 (Pub. L. 97-117). Particular attention is directed to section 125.57(b) which sets forth the statutory deadline (December 29, 1982) by which applications must be filed. See also, § 125.59(e)(1)(i).

Section 125.58: This section sets forth the definitions applicable to the 301(h) regulations. Several public comments were received on this section. In response, the proposed definition of large and small applicants (final § 125.58(c)) has undergone adjustment. Additionally, the definition of primary treatment (proposed section 125.58(n)) has been deleted. Otherwise, this section remains the same as proposed.

Section 125.59: This section sets forth general requirements applicable to 301(h) applications, including filing deadlines and procedures, procedures for revising applications, and procedures for State determinations. Several comments were received on this section, and changes have been made to the

provisions dealing with application revisions and the locations at which applications and State determinations are to be filed. Otherwise this section remains the same as proposed.

Section 125.60: This section implements section 301(h)(1) of the CWA and pertains to water quality standards specific to the pollutants for which a 301(h) modification is requested. One comment was received; however, this section remains the same as proposed.

Section 125.61: This section implements section 301(h)(2) of the CWA, and includes criteria related to public water supplies, biological impacts, and recreational activities. Several comments were received on this section; however this section remains the same as proposed.

Section 125.62: This section implements section 301(h)(3) of the CWA, and contains the criteria for monitoring programs. Several comments were received on this section and an adjustment was made to § 125.62(b)(1)(i) and a citation error corrected in § 125.62(b)(3)(iii). Otherwise, this section remains the same as proposed.

Section 125.63: This section implements section 301(h)(4) of the CWA and contains criteria related to impacts on other point and nonpoint sources. One comment was received; however, this section remains the same as proposed.

Section 125.64: This section implements sections 301(h) (5) and (6) of the CWA and contains criteria related to the control of toxic pollutants and pesticides. Several comments were received on this section and changes were made to §§ 125.64(a)(2), (c)(1), and (d); otherwise this section remains as proposed.

Section 125.65: This section implements section 301(h)(7) of the CWA and contains criteria related to increased discharges. Several comments were received; however, this section remains the same as proposed.

Section 125.66: This section was deleted and reserved for reasons set forth in the June 8, 1982, final amendments.

Section 125.67: This section sets forth special permit conditions to be included in 301(h) modified NPDES permits. Several comments were received; however, this section remains the same as proposed.

Application questionnaires: There are two questionnaires, one for large applicants and one for small; the use of these questionnaires is mandatory. Several comments were received which related to the questionnaires and changes have been made to the

questionnaires as described in sections III and IV of this preamble.

III. Major Changes From the Proposed Amendments

A. Application Revisions. Proposed § 125.59(d)(2) provided an opportunity for upward revision of an application (i.e., proposed improvements in treatment levels and/or improvements in outfall design and location) following a tentative decision denying the application. No comments were received on this proposal. However, numerous comments were received on proposed § 125.59(d)(1), which provided a more limited opportunity to seek downward revisions of proposed treatment levels.

Proposed § 125.59(d)(1) provided certain applicants who had filed an application under the 1979 Regulations with a one-time opportunity to request treatment levels that were lower than those proposed in their original 301(h) applications (i.e., downward application revisions). This proposal was intended to address the results in *NRDC v. EPA* which overturned provisions in the 1979 Regulations prohibiting variances for communities proposing less-than-primary treatment or already achieving secondary treatment. See, 1979 Regulations, §§ 125.59(b) (4) and (9). Because some applicants presumably proposed higher treatment levels than they otherwise would have desired in order to comply with the invalidated prohibitions, proposed § 125.59(d)(1) would have allowed such applicants a one-time opportunity to propose a lower treatment level. However, because applicants who originally proposed improvements beyond primary treatment were not actually required to do so by the invalidated prohibitions, EPA concluded that such applicants had not been prejudiced by the 1979 Regulations. Accordingly, proposed § 125.59(d)(1) was not made applicable to such applicants. In addition, because municipalities filing new applications under these amended regulations may propose any level of treatment (including no treatment) they believe will comply with the 301(h) criteria, proposed § 125.59(d)(1) also was not made applicable to new applicants.

None of the comments received on § 125.59(d)(1) supported retaining the above limitations on the provisions for downward application revisions. Several commenters found the limitations to be confusing and subject to various interpretations. Some commenters pointed to language in the preamble to the 1979 Regulations (44 FR 34797) which had discouraged them from proposing only primary treatment. Other

commenters pointed out that treatment levels proposed in an application could be dictated by requirements of State law, and that if State law subsequently changes, an opportunity to seek an appropriate downward revision should be available. In addition, several commenters suggested that downward revisions be allowed where there are substantial changes in the applicant's circumstances.

After considering these comments, EPA believes that there are sound reasons why all existing applicants might have been discouraged from proposing only primary treatment. Consequently, EPA agrees it would be inequitable not to allow all existing applicants to revise their applications in light of the unforeseen changes resulting from the NRDC v. EPA decision and the statutory amendments. EPA therefore is eliminating the restrictions on downward revisions by existing applicants. Because of this change, EPA is also deleting proposed § 125.58(n), which defined the term "primary treatment." A definition for this term is no longer necessary in light of the elimination of the restrictions on revisions by existing applicants.

Similarly, when there are substantial changes in circumstances beyond the applicant's control following application submission (e.g., changes in State or Federal law, significant changes in receiving water characteristics, decreased pollutant discharges by other sources), EPA believes new applicants should also be allowed to request downward revisions of their proposed treatment levels. This approach would continue to assure protection of the environment since any applicant seeking a downward revision must still demonstrate that the lower treatment levels will meet the 301(h) criteria. Such an approach also serves to better implement the intent of section 301(h) by avoiding treatment beyond those levels actually needed to protect the environment. *See*, H.R. Rept. 207, 97th Cong., 1st Sess. at 18 (1981). EPA has therefore changed proposed § 125.59(d) to allow downward revisions by new applicants in such cases.

In summary, under final § 125.59(d), existing applicants under the 1979 Regulations and new applicants under these amended 301(h) regulations may avail themselves of a one-time opportunity to revise their application upwards or downwards. *See*, final §§ 125.59(d) (1) and (2). Because requests for revisions may potentially extended the 301(h) review process and will require additional effort to review, final § 125.59(d)(2) requires new

applicants to demonstrate that their proposed downward revision is a result of substantial changes in circumstances beyond the applicant's control. New applicants under these amended regulations may propose any treatment level (including no treatment) in their original applications. Accordingly, new applicants must show they meet the substantially changed circumstances test to justify a request for downward revision in order to avoid unwarranted revisions and minimize delays in meeting the requirements of the CWA. However, because existing applicants have been substantially affected by the NRDC v. EPA decision and statutory amendments, EPA believes that they have already met the substantially changed circumstances test as a group and thus should not be required to further justify their individual request for downward revisions.

Another commenter suggested that EPA provide a mechanism to allow applicants to update their applications without resorting to formal permit revisions. This commenter believed that as a result of the time spent in Agency review of the applications the data and assumptions in the original application might no longer be applicable at the time a tentative decision is announced.

As discussed above, because revisions to proposed treatment levels will require a reanalysis by EPA to determine compliance with the 301(h) criteria, such revisions can result in disruptions to the review process and attendant delays in compliance with the CWA. In addition, in order to assess compliance with the 301(h) criteria, EPA must have a specific proposal to evaluate (*see*, § 125.61(e)(1)); submission of multiple options or revisions can create confusion as to what the applicant is actually proposing. Accordingly, EPA does not agree that revisions to applications should be allowed on an informal basis, and will continue to require compliance with the formal procedures contained in § 125.59(e)(2).

However, EPA is changing § 125.59 (d) and (e) to allow an opportunity to request revisions to treatment levels prior to the tentative decision. Limiting the opportunity to seek revisions only after issuance of a tentative decision and draft permit could be disadvantageous in cases where applicants are authorized or requested under § 125.59(f) to collect substantial additional data. Such additional data collection may yield information that could substantially influence the validity of proposed treatment levels and outfall location and design. Thus, it

would be advantageous for such applicants to have an opportunity to revise their applications consistent with the results of additional data collected before EPA makes its decision. This approach will allow EPA to base its decision on an up-to-date application. Because EPA normally would not review such applications until the additional data are submitted, allowing application revisions concurrent with the data submission would not result in any additional outlays. EPA therefore has modified proposed § 125.59(d) and (e) to allow applicants who have been authorized or requested to submit substantial additional data under § 125.59(f) to submit a revised application concurrent with the submittal of the additional data. *See*, final §§ 125.59(d)(3) and 125.59(e)(2)(ii). Applicants making such revisions may still take advantage of the one-time opportunity to revise their application following EPA's tentative decision on their application.

Finally, EPA is revising proposed § 125.59(e)(2)(i) which dealt with the timing for submitting revisions to applications. As proposed, this section did not address the deadline for revisions by applicants who have already received tentative decisions on their original applications. Final § 125.59(e)(2)(i)(B) now provides that applicants who have already received a tentative decision must submit the revision within one year of promulgation of these regulations.

B. Categorization of Applicants by Size. Proposed § 125.58(c) divided applicants into "large" and "small" categories. Under the proposed regulations, small applicants were provided with a simplified application questionnaire and given added flexibility in designing monitoring and toxic control programs. *See*, 47 FR 24922-3. This approach was based on EPA's experience in implementing the section 301(h) program which indicated that smaller discharges generally have minimal impacts on the marine environment and therefore pose a lower environmental risk than larger discharges. *See*, Technical Support Document, Chapter I. Under proposed § 125.58(c), small applicants were defined as having POTW contributing populations of less than 50,000 and total discharge design flows of less than 5.0 million gallons per day (mgd). Conversely, large applicants were defined as having contributing populations equal to or greater than 50,000 or total discharge design flows of 5.0 mgd or more.

The comments received generally supported distinguishing between large and small applicants; however, several commenters questioned the definition of "small applicant." Some suggested that the proposed definition of "small applicant" could be too restrictive, pointing to instances where POTWs with contributing populations of less than 50,000 have flows above 5.0 mgd due to large amounts of infiltration/inflow during wet weather periods. (Infiltration is water that enters the sewer system from the ground through such means as defective pipes, pipe joints, connections, or manholes. Inflow is water that enters a sewer system from sources such as roof leaders, cellar drains, yard drains, area drains, drains from springs and swamps, manhole covers, cross connections with storm sewers, etc. *See*, 40 CFR 35.2005). Other comments suggested that, instead of total discharge design flows, EPA should base the small applicant flow limitation on average annual flow, average dry weather flow, or maximum dry weather flow. Some of the comments indicated that use of the term total discharge design flow was confusing and should be clarified.

Because infiltration/inflow typically contains low concentrations of pollutants, EPA agrees that the flow limitation portion of the definition should be changed to take this fact into account. This has been done in final § 125.58(c) by substituting the term "average dry weather flow" for the term "total discharge design flow." By using dry weather flows, the final definition largely discounts infiltration/inflow since the occurrence of significant infiltration/inflow is usually associated with wet weather periods. As described in the final definition, the term average dry weather flow means the average daily total discharge flow during the maximum month of the dry weather season. In order to clarify the time frame on which the population and flow limitations are based, final § 125.58(c) now provides that the contributing population and dry weather flows projected for the end of the five year permit term are to be the basis for determining applicant categories. The application questionnaires have been appropriately modified to reflect this change in the definition of small and large applicants.

One commenter suggested that the distinction between small and large applications (proposed § 125.58(c)) should be based on equivalent population rather than actual population. This commenter referenced high dry weather infiltration/inflow (as

opposed to wet weather) and large industrial contributions as two sources of excessive POTW flows. Presumably, this commenter believed a distinction based on equivalent population would discount these two sources. However, EPA does not believe the definition should be changed to discount these sources. Unlike wet weather infiltration/inflow, it is very difficult to estimate accurately dry weather infiltration/inflow effects on measured POTW flows. Also, EPA does not believe that POTWs that exceed 5.0 mgd because of large industrial users should be classified as small POTWs because of the potential for high pollutant mass loadings from such industries.

A few commenters suggested that the definition of small applicant was arbitrary and that the flow limits for small applicants be increased from 5.0 mgd up to the 15 to 25 mgd range. One of these comments pointed out that 16 mgd had been used by EPA as a reference size to establish review priorities for existing applicants. EPA does not agree that the definition of small applicants should be changed to reflect these comments.

Although 16 mgd was used to set priorities for reviewing the existing 301(h) applications, this number was based upon consideration of the number of existing applications, available review resources, and Agency priorities. Such circumstances are not relevant to establishment of regulatory requirements designed to demonstrate compliance with the requirements of section 301(h). EPA has selected the 5.0 mgd flow based on consistency with other relevant statutes and regulations and the fact that larger dischargers pose a proportionately larger risk to the environment and should therefore provide more information to demonstrate compliance with the 301(h) criteria. *See*, 47 FR 24922.

No significant industrial sources were identified in the applications for POTWs less than 5.0 mgd among the 70 existing 301(h) applications. Based on its experience with the 301(h) program, EPA believes that this 5.0 mgd figure is a reasonable point at which to differentiate between large and small applicants. In contrast, the comments suggesting higher flow rates only stated a general preference. The comments did not explain why such higher rates would pose a sufficiently low risk to the marine environment to justify reduced application requirements. Moreover, as explained below, the data support requirements within the large applicant category are flexible enough to accommodate the range in POTW sizes

in the large applicant category. Thus, in the absence of any better alternative, EPA is retaining the 5.0 mgd number in its definition.

Other comments suggested that EPA create additional categories of applicants. One commenter suggested a category for applicants in the 5 to 25 mgd range; another suggested a category for very small communities with populations of 1,000 to 1,500 people. EPA believes the application requirements established for small applicants represent the minimal requirements necessary to demonstrate compliance with the 301(h) criteria, even for very small communities. Creation of additional categories of applicants, each with its own questionnaires and requirements, would add unwarranted confusion and complexity to the regulations. EPA therefore has rejected these comments.

Other commenters suggested that the flexibility made available to small applicants also apply to large applicants who demonstrate their discharge characteristics are similar to those of small applicants. EPA believes it has already provided large applicants with sufficient flexibility to take into account varying individual circumstances within their class. Although all large applicants must utilize the large applicant questionnaire, the nature and extent of data required to respond to the questionnaire will necessarily depend on the size of the discharge, effluent characteristics, and, as discussed immediately below, the nature of the receiving waters. For example, EPA would not expect a medium sized POTW discharging low levels of toxics to well mixed ocean waters to supply as much data as a larger POTW discharging substantial toxics to estuarine waters or near sensitive biological habitats.

Finally, one commenter suggested that the impacts of a discharge are governed by not only the size of the discharge, but also by the nature of the receiving waters. This factor has already been taken into account under these regulations. *See e.g.*, § 125.61(c)(4). In addition, as pointed out in the preamble to the proposed regulations at 47 FR 29222 and in the proposed small applicant questionnaire, small applicants discharging into waters with poor dispersion and transport characteristics near distinctive and/or susceptible biological habitats, or with substantial quantities of toxics may need to provide additional field data. In order to clarify this point, the introduction to the small applicant questionnaire has been modified to

direct small applicants who need additional field data to the relevant sections of the large applicant questionnaire. Similarly, data support requirements for large applicants will depend in part on the characteristics of the affected receiving water and its biological communities. Accordingly, the nature of the receiving waters is already a factor taken into consideration.

IV. Other Issues and Changes

A. Definitions § 125.58. One commenter suggested that the balanced indigenous population (BIP) definition in proposed § 125.58(f) was unclear and should be deleted. However, the commenter then went on to offer a substitute definition that is very similar to EPA's definition. The BIP definition in § 125.58(f) is unchanged from the 1979 Regulations (*see*, 44 FR 34802-3), and EPA's experience indicates that the definition has not been confusing to applicants. Because this was the only public comment on the clarity of the BIP definition and because the commenter's suggested definition is similar to that already used, EPA has decided to retain the existing definition.

Another commenter stated that EPA's definition of pesticides (§ 125.58(m)) is extremely limited and should be revised. This definition is unchanged from the 1979 Regulations. EPA agrees that the list of pesticides in § 125.58(m) is limited. However, this is because most pesticides of concern are already included in the definition of toxic pollutants. *See*, final § 125.58(u). The definition of pesticides thus is intended to supplement the definition of toxic pollutants, not to serve as a comprehensive list of pesticides of concern under section 301(h). Accordingly, no change is warranted.

Two comments were received on proposed § 125.58(r) (final § 125.58(q)) which defines saline estuarine waters. Both of these comments questioned the 25 parts per thousand (ppt) salinity concentration used in the definition. This definition was unchanged from the 1979 Regulations and, as explained in the preamble to those regulations (44 FR 34795), is fully consistent with the statute and legislative history. Accordingly, EPA is not changing the definition. It should be noted, however, that 25 ppt is used as a general test in final § 125.58(q) and the failure of the receiving water to meet this salinity concentration does not absolutely preclude eligibility for consideration under section 301(h). However, where salinities fall significantly below this concentration, applicants should be careful to document that the waters into which they discharge meet the other

requirements of final § 125.58(q), i.e., free connection to the territorial sea and net seaward exchange with ocean waters.

Two commenters believed that most applicants would probably calculate/describe zones of initial dilution (ZID) larger than suggested by EPA's definition (proposed § 125.58(x), final § 125.58(w)). They requested that the 301(h) regulations provide more details regarding acceptable ZID sizes. The definition of the ZID already establishes the maximum permissible size of the ZID as the mixing zone restrictions allowed by applicable water quality standards. In addition, guidance on how to calculate the ZID size is provided in the Technical Support Document. Therefore, EPA does not believe a change is necessary.

B. General Requirements (§ 125.59). One commenter expressed opposition to proposed § 125.59(e)(3) and related provisions which call for applicants to obtain State determinations on whether proposed discharges will comply with State laws or will cause additional treatment requirements for other point and nonpoint sources. This commenter suggested that this was a *de facto* delegation of 301(h) decisionmaking to the State and also was concerned that negative State determinations would preclude public comment on the applications. Finally, this commenter expressed concern over the resource burden being shifted to the States with the State determination requirement. On the other hand, another commenter urged that the States make the decision on which communities qualify for 301(h) variances and establish the requirements for obtaining such variances.

Section 301(h) provides that 301(h) variances are to be issued by EPA. In addition, prior to amending section 301(h) (Pub. L. 97-117), Congress had considered but rejected the approach of providing for the issuance of 301(h) variances by the States (*see*, H.R. 4503, 97th Cong., 1st Sess., as introduced September 16, 1981). Accordingly, the issuance of section 301(h) variances cannot be delegated to the States and EPA must reject the comment suggesting that States make the 301(h) decision.

However, section 301(h) does require State concurrence in approval of a variance, thus effectively providing States with a veto power over the issuance of 301(h) variances. Because proposed § 125.59(e)(3) implements a statutory requirement existing under section 301(h), it in no sense represents a *de facto* delegation of 301(h) decisionmaking authority to the States.

Rather, a negative State determination under § 125.59(e)(3) signifies that the State will not concur in approval of a 301(h) variance, thus precluding EPA from approving the applications and making further EPA review unnecessary.

With regard to concerns about the opportunity for public comment, in cases where the State's determination is negative, EPA will deny the affected applications without further review. Although public hearings would thus be unavailable in an EPA forum, challenges to, or comment on, adverse State determinations still would be available in State forums to the extent provided for in State law. *See*, 40 CFR 124.54(c) and 124.55(e). Accordingly, States are free to allow for public comment or hearings on their determinations if they so choose.

EPA also does not agree that an early State determination imposes an unwarranted burden on the State. Since the States possess an effective veto over section 301(h) modified permits, it is important for EPA to know the State's determination prior to committing the substantial resources necessary to review all the technical aspects of an application which the State might ultimately disapprove. EPA has also found that some State requirements are written in qualitative terms or may be subject to differing interpretations. Because the States possess the experience and expertise in evaluating compliance with such requirements, it would be useful to have their interpretation prior to EPA review. EPA has drafted § 125.59(e)(3) to obtain the benefits of an early State determination while at the same time limiting the burden being placed on the State. Rather than seeking an early State determination on all the 301(h) criteria, § 125.59(e)(3) calls for a State determination on matters of State law and impacts on other sources. These are areas within State expertise, and the State may await EPA's tentative decision prior to taking its ultimate position on whether the other 301(h) criteria are satisfied. *See*, 47 FR 24922. Accordingly, § 125.59(e)(3) does not place an unwarranted burden on the State.

Two commenters questioned how the State would make its determination in cases where the application does not contain sufficient information. In such cases, the State should contact EPA to identify the needed information and request an extension to the 90 day deadline for State determinations as provided for in § 125.59(e)(3). While the State could request needed information directly from the applicant, EPA

believes the preferable course of action would be to have the State and EPA cooperate in jointly developing such requests. Although EPA will not review the merits of an application prior to receiving a favorable State determination, in cases where the State identifies deficiencies in the application which preclude an early State determination, EPA would examine the application to determine, in cooperation with the States, what additional information is needed. EPA believes such State/EPA cooperation will minimize the potential burden on the applicants, States, and EPA. In light of these facts and circumstances, EPA is retaining the requirement for an early State determination as described in § 125.59(e)(3).

Because EPA is delegating 301(h) decisionmaking authority to its Regional offices, § 125.59(e) has been appropriately modified to provide for submission of applications, revisions, and State determinations to the appropriate Regional Administrator.

C. Existence of and Compliance with Applicable Water Quality Standards (§ 125.60). Proposed § 125.58(w) (final § 125.58(v)) defines water quality standards as those water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act. Although final § 125.58(v) amends the definition of water quality standards in the 1979 Regulations to delete reference to the word "state", the term "water quality standards" still refers only to water quality standards adopted, promulgated, or left in effect under section 303. See, 47 FR 24924.

One commenter believed that the Act does not authorize or contemplate the application of water quality standards to receiving waters beyond the territorial sea (i.e., beyond the three mile limit), pointing to the results in *PLF v. Costle*, 586 F.2d 650 (9th Cir., 1978), reversed on other grounds, *Costle v. PLF*, 445 U.S. 198 (1980). This commenter recommended that EPA establish the section 403(c) ocean discharge criteria of the Clean Water Act and its implementing regulations as the applicable water quality standards for 301(h) discharges beyond the territorial sea.

EPA addressed this comment in the preamble to the 1979 Regulations and sees no need to address it again. The approach to water quality standards in both the 1979 Regulations and these final amendments is based on the statute, relevant case law, and legislative history. As previously explained in the 1979 Regulations' preamble (44 FR 34798-9), the definition

is necessary to resolve an inconsistency in the statute which would otherwise preclude issuance of 301(h) variances for discharges beyond the territorial seas. Moreover, Congress in amending section 301(h) (Pub. L. 97-117) did not change the approach taken by EPA to resolve this inconsistency.

This same commenter also indicated that EPA has not identified water quality standards applicable to the contiguous zone for purposes of section 301(h) as required by section 304(a)(6). As the 1979 Regulations' preamble stated, a list of marine water quality standards has been published by EPA (see, 43 FR 13914, April 3, 1978). EPA has now updated the list of marine water quality standards which may be obtained by contacting EPA at the address given above.

Another commenter suggested that section 125.60 should include reference to water quality standards for fecal coliforms. This issue has already been addressed by the 1979 Regulations. See, 44 FR 34799. Section 125.60 refers only to those pollutants which are governed by secondary treatment limitations and for which a modified permit is requested. See, section 301(h)(1). Thus, fecal coliforms are not covered by § 125.60 since they are not regulated under the secondary treatment requirements of section 301(b)(1)(B). The requirement to meet water quality standards exists in section 301(b)(1)(C) of the Act and is addressed in the Consolidated Permit Regulations at 40 CFR 122.62(d). Because section 301(h) variances apply only to Federal secondary treatment requirements under section 301(b)(1)(B), recipients of 301(h) variances must still comply with section 301(b)(1)(C). Specific provisions in these regulations to require compliance with fecal coliforms standards are therefore unnecessary. In addition, because fecal coliforms can indicate the potential for impacts on recreational activities and shellfishing, applicants should discuss fecal coliforms in demonstrating their compliance with § 125.61 and section 301(h)(2) of the statute. To clarify this point EPA has reworded the application questionnaires to require a discussion of fecal coliforms. See, small applicant questionnaire, II. B. 4. a.; III. E. 2.; large applicant questionnaire, II. B. 5. a.; III. E. 2.

D. Attainment or maintenance of water quality which assures protection of public water supplies, a balanced indigenous population of shellfish, fish, and wildlife and recreational activities in and on the water (§ 125.61). Two commenters recommended that the regulations provide specifically for protection of commercial shellfish and

aquaculture industries, expressing concern that protection of a balanced indigenous population (BIP) may not be enough to protect such activities. In fact, several of the analyses required by § 125.60 and 125.61 address compliance with water quality standards, dilution, dispersion, and transport characteristics, maintenance of a BIP, toxics occurrence and bioaccumulation, and recreational restrictions. Such factors are all relevant to the evaluation of the potential impacts of a proposed discharge on commercial shellfish and aquaculture industries. Additionally, the States have two opportunities under these regulations to register concern over commercial shellfish and aquaculture industries: (1) With their determination on application compliance with State laws under § 125.59(e) (3) and (2) through their concurrence/nonconcurrence in EPA's approval of a variance. Thus, EPA believes adequate safeguards already exist and that additional regulatory provisions are unnecessary.

One commenter requested clarification as to how applicants proposing reduced treatment levels (i.e., "altered discharges" see, § 125.58(b)) must demonstrate compliance with the 301(h) criteria. Final §§ 125.61(e)(1) through 125.61(e)(4) apply to altered discharges and remain unchanged from the proposed regulations. These provisions indicate that applications based on altered discharges must (1) demonstrate that such alterations have been thoroughly planned, (2) include projected discharge flows and pollutant mass loadings for the altered discharge as well as for the existing discharge, (3) analyze whether the existing discharge complies with §§ 125.61(a) through 125.61(d), and (4) analyze how the altered discharge will comply with §§ 125.61(a) through 125.61(d). For example, applicants proposing altered discharges must discuss whether the BIP requirements are met for the existing discharge and show that the altered discharge will provide for protection and propagation of a BIP. Data will be needed to analyze the existing discharge's compliance with §§ 125.61(a) through 125.61(d). Predictive analyses will then be necessary to demonstrate that the altered discharge will also comply with §§ 125.61(a) through 125.61(d).

E. Establishment of a monitoring program (§ 125.62). Sections 125.62(b), (c), and (d) set forth monitoring requirements and state that the specific biological, water quality, and effluent monitoring program requirements are to be implemented to the extent

practicable. These requirements allow greater flexibility than the 1979 Regulations, especially for biological monitoring by small applicants. *See*, § 125.62(b)(2). Two commenters recommended that these new provisions be applied to existing applicants as well as new applicants. Since no final 301(h) modified NPDES permits have been issued, EPA will apply all provisions of the amended regulations to existing applicants, including those that have already received tentative decisions approving 301(h) variances.

Tentative decisions issued to date have required revisions to the monitoring programs proposed by the applicants. EPA evaluated the proposed monitoring programs against the 1979 regulatory requirements and required monitoring program revisions on the basis of essential data needs, climate, oceanographic characteristics, and practicability. EPA believes that the monitoring program revisions required by the tentative decisions are practicable and necessary to adequately monitor impacts of the modified discharges both under the standards of the 1979 Regulations and today's amendments. Therefore, those applicants that have already received tentative decisions approving 301(h) variances must be prepared to show that the required monitoring program revisions are impracticable in order to justify reductions in the monitoring requirements.

Another commenter was concerned that the requirement in proposed § 125.62(b)(1)(i) for periodic biological surveys is vague and recommended that the regulations specify a minimum frequency for biological monitoring. This commenter suggested annual surveys as a minimum frequency. EPA specified "periodic" biological surveys in proposed § 125.62(b)(1)(i) so that the frequency of such surveys could be determined on a case by case basis. Biological surveys can be complex and time consuming. EPA's experience with the 301(h) program indicates that specifying a minimum frequency for biological surveys, such as once per year as this commenter suggested, could cause an unjustifiable hardship on some 301(h) permittees with little or no expected benefits. This is especially true for small permittees that discharge to open coastal waters. In order to provide sufficient flexibility to respond to individual permittee circumstances and receiving water characteristics EPA is retaining the requirement for periodic biological surveys in final § 125.62(b)(1)(i). However, EPA expects that most large permittees and some

small permittees will, in fact, be required by their 301(h) modified permits to conduct at least annual biological surveys.

Another commenter expressed concern that the periodic biological surveys requirement of proposed § 125.62(b)(1)(i) did not appear to require periodic monitoring of baseline (i.e., control) stations or comparison of survey results for areas impacted by modified discharges with baseline data gathered during the periodic surveys. The need for baseline data is discussed in the Monitoring Guidance Document. However, EPA agrees that the proposed regulation should be clarified with regard to this issue and has reworded final § 125.62(b)(1)(i) to expressly require periodic monitoring at baseline stations.

One commenter suggested that the flexibility in monitoring provided for small applicants should be available to all applicants. Another commenter suggested the regulation did not allow for the establishment of monitoring requirements as a function of the degree of treatment. An additional commenter suggested monitoring requirements should be a function of receiving water characteristics regardless of the size of the discharge.

EPA believes that the regulations already adequately respond to the concerns of these commenters. Section 125.62(a)(1)(iv) provides that the frequency and extent of all monitoring must take into account the rate of discharge, quantities of toxic pollutants, and potentially significant impacts on the receiving waters. Accordingly, applicants with higher levels of treatment and/or with low levels of toxics in their discharge would not be expected to conduct as extensive a monitoring program as applicants with lower treatment levels and/or higher levels of toxics. Similarly, dischargers to sensitive receiving waters such as saline estuaries or near sensitive biological habitats would be expected to conduct more extensive monitoring than dischargers to open coastal waters without sensitive biological habitats.

In addition to considering the nature of the discharge and the characteristics of the receiving water and its biological communities, EPA will also consider whether monitoring is practicable. Factors which would be considered in determining practicability would include the difficulty of monitoring due to harsh climate or oceanographic characteristics as well as the resources and level of expertise available to the applicant. Because large applicants generally pose a greater risk to the environment and

also have greater resources at their disposal, the regulations include more specific monitoring requirements in § 125.62(b) for large applicants than for small applicants. However, under the amended regulations, where large applicants can show certain requirements are impracticable based on factors such as those discussed above, such applicants may be excused from those specific requirements. Therefore, the regulations already provide large applicants sufficient flexibility in the design of their 301(h) monitoring programs.

One commenter was concerned that 301(h) modified permits may include excessively detailed monitoring program requirements. In order to assure that monitoring requirements are carried out, EPA will continue to include specific monitoring program requirements in 301(h) modified permits. *See*, 40 CFR 122.13(a). However, the degree of detail specified in the permit will be determined by the permit writer on a case-by-case basis taking into account the complexity of the necessary monitoring.

Finally, EPA has discovered an error in proposed § 125.62(b)(3)(iii)(B). That section inadvertently contained a cross-reference to § 125.61(c)(1). The correct cross-reference should have been to § 125.61(c) and this error has been corrected in the final regulation.

F. Effect of discharge on other point and nonpoint sources (§ 125.63). One commenter suggested that the 301(h) regulations should allow for additional point or nonpoint source pollution control requirements if such requirements are cost-effective and agreeable to all parties. Section 301(h)(5) specifically prohibits modified discharges from causing additional requirements on any other point or nonpoint sources. In the absence of a specific proposal, it is not possible to evaluate whether a mutual agreement among various sources would be feasible or consistent with this statutory provision. EPA believes that the regulations as drafted do not impose restrictions beyond those in the statute. Accordingly, to the extent that such an agreement is allowable under the statute, it would also be allowable under these regulations. Therefore, regulatory changes to accommodate such potential agreements are unnecessary.

G. Toxics control program (§ 125.64).

Proposed § 125.64(a)(1) required chemical analysis of current discharges for all toxic pollutants and pesticides. A number of comments were received on the toxics analysis requirements of

proposed § 125.64(a). One commenter recommended that the regulations require toxics analyses of sludge samples. The commenter was concerned that potentially harmful toxics in 301(h) discharges may go undetected because they occur at concentrations in the effluent below detection limits. Such toxics may concentrate in sludge solids to detectable levels and, consequently, the commenter suggested that sludge samples should be analyzed for toxics.

EPA agrees that toxic pollutants may concentrate in sludge solids to some extent. However, section 301(h) prohibits the discharge of sludge. Thus, unless toxic pollutant concentrations are at detectable levels in the effluent or there is some other reason to suspect a problem exists, analysis of sludge samples would be of little value in evaluating 301(h) applications. Moreover, the presence of toxic pollutants in residual sludge does not necessarily mean that the same pollutants will be present in the effluent. Finally, although sludge sample toxic analyses could be useful for evaluating alternatives for sludge disposal, such evaluations are not directly related to the purpose of section 301(h) and therefore should not be included as an application requirement. Therefore, EPA concludes that a requirement under section 301(h) for sludge toxics analysis is not justified.

Several commenters suggested that the exemption of small applicants that certify no known or suspected sources of toxic pollutants or pesticides from the requirement for toxics analysis of current discharges (proposed § 125.64(a)(2)) is unjustified and should be eliminated.

As explained in the preamble to the proposed 301(h) amendments (47 FR 24923), EPA's experience with the section 301(h) program indicates that the risk of toxic pollutants and pesticides creating environmental problems is very low for small applicants without known or suspected sources of toxic pollutants. Therefore, EPA continues to believe that an exemption from the toxic chemical analysis requirement for such small applicants is appropriate. However, to assure that requests for exemptions are fully supported, EPA has added a requirement to final § 125.64(a)(2) that small applicants seeking an exemption from the toxic chemical analysis requirement must document their certification of no known or suspected toxic sources with an industrial user inventory as described by EPA's general pretreatment regulations (40 CFR 403.8(f)(2)).

These commenters also apparently misinterpreted the scope of this

exemption, believing that a permanent exemption from effluent toxics monitoring was provided. However, § 125.62(d) requires *all* 301(h) permittees to analyze their effluents for toxic substances, to the extent practicable, as a part of their effluent monitoring programs.

One of these commenters mistakenly concluded that the proposed toxics chemical analysis exemption for small applicants is based on acceptable toxic chemical mass emission rates below which analyzing or monitoring for toxic pollutants is not required. The commenter then concluded that the proposed regulation requires monitoring by large applicants for toxic pollutants even though concentrations may be less than the detection limit of ten parts per billion. Finally, the commenter argued that the acceptable mass emission rate test should apply to large applicants as well as small applicants.

No specific threshold or maximum acceptable mass emission rate for toxic pollutants in POTW effluents has been established. The exemption in § 125.64(a)(2) addresses only the reasonableness of a particular application requirement for small applicants. For large applicants, EPA cannot reasonably conclude that toxic pollutants are likely to be discharged only in very small quantities or that the environmental risk from toxic pollutant discharges is likely to be very small. Therefore, proposed § 125.64(a) requires all large applicants and small applicants with toxic pollutant sources to submit toxic pollutant analyses with their applications. Further, EPA emphasizes that no applicants are exempt from the requirement for toxic pollutant analyses, to the extent practicable, in their proposed effluent monitoring programs. *See*, § 125.62(d).

One commenter interpreted the compliance schedule requirement of proposed § 125.64(c)(1) as being inconsistent with State development of pretreatment programs under 40 CFR Part 403. Section 125.64(c)(1) provides that an applicant shall have or develop an industrial pretreatment program by July 1, 1983, or the date established in its NPDES permit whichever date is earlier. EPA believes there is enough flexibility in this provision for State development of pretreatment programs for local adoption and EPA approval under 40 CFR Part 403 since the July 1, 1983, deadline in § 125.64(c)(1) comes from the General Pretreatment Regulations. *See*, 40 CFR 403.8(b). However, to emphasize the consistency of this provision with the pretreatment regulations, EPA has made a minor adjustment to the wording of § 125.64(c)(1) and added a cross-

reference to the General Pretreatment Regulations.

Another commenter observed that EPA's 1982 Clean Water Act amendment proposals provide for exemptions from pretreatment requirements if, among other things, the POTW is, and will be, in compliance with secondary treatment requirements (as may be modified by section 301(h)). The commenter was concerned that proposed § 125.64(c) may not be consistent with these proposed legislative amendments. These proposals do not have the force of law and § 125.64 is necessarily written to be consistent with the current provisions of the CWA. If legislative amendments related to pretreatment requirements or regulatory changes to 40 CFR Part 403 occur, EPA will modify the 301(h) regulations accordingly.

Other comments were received on the nonindustrial source control provisions of proposed § 125.64(d). One commenter suggested that public education programs required by proposed § 125.64(d)(1) for nonindustrial toxics control may not be cost-effective and should be deleted from the 301(h) regulations. Although EPA believes many small applicants should be exempted from the requirement for developing and implementing extensive nonindustrial toxics source control programs, section 301(h)(6) of the Clean Water Act requires all applicants, to the extent practicable, to establish a schedule of activities for eliminating the entrance of nonindustrial toxic pollutants into their POTWs. EPA believes that public education programs represent an important first step in the nonindustrial control programs to be developed by large applicants and a reasonable way for small POTWs without serious toxic problems to meet their statutory obligation. Therefore, the final regulation still requires all applicants to submit a proposed public education program, including a schedule for implementation. To clarify that the public education programs are one element of nonindustrial source control programs, EPA has reworded § 125.64(d)(2).

Another commenter suggested that the exemption of small applicants (those that certify no known or suspected problems related to toxic pollutants or pesticides) from the substantial nonindustrial toxics control program development requirement (§ 125.64(d)(2)) seems arbitrary. As explained in the preamble to the proposed amendments (47 FR 24923), EPA believes that such small applicants present a very low risk to the environment due to nonindustrial toxics sources. The commenter

suggested that small applicants in rural areas may have significant levels of pesticides in their POTW influents. However, if this were the case, the presence of significant amounts of pesticides would preclude the above mentioned certification and hence this exemption would not apply. EPA has reworded the small applicant questionnaire to emphasize that such applicants must provide data and a rationale which supports their certification of no known or suspected water quality, sediment accumulation or biological problems. Because large applicants are more likely to have significant amounts of toxics, they are all subject to additional, specific nonindustrial toxics control requirements. However, such additional controls are required "to the extent practicable," thereby providing large applicants with flexibility in developing control programs. Determinations of whether specific additional controls are practicable would consider factors similar to those discussed in the monitoring section of this preamble.

One commenter recommended that the regulations require a 12 month deadline for implementing nonindustrial toxics control programs as opposed to the "meaningless" earliest possible schedule requirements of proposed § 125.64(d)(2). EPA has reconsidered its position and agrees that, in view of their importance, there should be a schedule for implementing nonindustrial toxics control programs. Under the 1979 Regulations (former § 125.64(d)(1)(i)) the schedule of activities to implement nonindustrial source controls was to be implemented no later than 18 months after issuance of a section 301(h) modified permit. This time frame has been reinserted into § 125.64(d)(3). In addition, because no time frame was established for implementing public education programs in the proposed regulations, this 18 month time frame has also been inserted into § 125.64(d)(1). Finally, to emphasize that this is an outside date for implementation, EPA has reworded § 125.64(d)(4) to clarify that EPA may revise not only the control programs but also the schedules for such programs.

H. Increase in effluent volume or amount of pollutants discharged (§ 125.65). One commenter interpreted proposed § 125.65 as including no provision for POTWs with separate sanitary and storm sewers that experience occasional overflows due to excessive infiltration/inflow. This commenter expressed concern over its eligibility for a 301(h) modification and recommended special provisions for

such applications. EPA believes that special provisions are unnecessary. Municipalities that have separate sewer systems with substantial infiltration/inflow problems are required by § 125.65 to account for infiltration/inflow in their projections of proposed discharge flows and pollutant mass loadings so that evaluation of the application will consider the full range of flows and loadings. Such infiltration/inflow impacted discharges are eligible for a 301(h) variance like any other discharge and similarly must comply with all of the 301(h) requirements.

Another commenter was concerned about whether EPA intended to establish not-to-exceed flow requirements. Section 125.65 implements section 301(h)(7) and limits increases in pollutant discharges to the levels specified in section 301(h) modified permits. Flow limits are necessary because of the relationship between flows, mass loadings of pollutants, and initial dilutions achieved. Thus, 301(h) modified NPDES permits will set flow and mass loading limits based on the flows and loads submitted by the applicants. Such flow and load projections must include any infiltration/inflow and combined sewer flows that are discharged through the proposed outfall/diffuser so that evaluation of the application will include the full range of expected flows and pollutant mass loadings. Authority already exists to include flow limitations in 301(h) modified permits so that further regulatory provisions are unnecessary. *See e.g.,* 40 CFR 122.3 ("effluent limitation"), 125.65 and 125.67.

I. Application questionnaires. One commenter registered a concern that the simplified, generalized applicant questionnaires will result in confusion and delays as EPA Regions are forced to request additional clarifying information before tentative decisions can be finalized. EPA agrees that a greater potential for additional data requests may exist but believes that the advantages of the new questionnaires far outweigh this risk. Further, other comments received favored the simplified requirements.

In addition to the changes made in response to comments as previously described in Section IV of the preamble, EPA's review of the proposed application questionnaires has revealed two other questions which should be changed to specify more accurately the information being sought.

The first of these changes involves compliance with the Coastal Zone Management Act, the Marine Protection Research and Sanctuaries Act, and the

Endangered Species Act. The regulatory provision dealing with these statutes appears in § 125.59(b)(3). As explained in the preamble to the proposed regulations (47 FR 24924), this section reflects a streamlining of former § 125.59(b)(7) and did not contain any substantive change in the requirements. However, the proposed application questions relevant to these statutes did not contain specific details on the information which should be supplied to demonstrate compliance. Accordingly, in order to clarify this provision, EPA has reworded the questionnaires to provide more detail on the information to be supplied. This change is set forth in the final small and large application questionnaire at II. D. 3. EPA believes this clarification will facilitate application review and reduce requests for additional information related to these statutes.

The second of these changes affects only the large applicant questionnaire. Because oceanographic charts provide true, rather than magnetic, bearings EPA is substituting the term "true" for "compass" in the question relating to current directions. This change appears in the large applicant questionnaire at II. B. 4.

EPA has also deleted proposed question III. A. 4. from the large applicant questionnaire, which dealt with the supply of dilution water. This question is unnecessary in light of the proposed deletion of regulatory language regarding the supply of dilution water. *See*, 47 FR 24924.

Finally, EPA has made a number of editorial changes to the application questionnaires. These changes are intended to improve their organization and readability, and do not make substantive changes.

J. Miscellaneous.—1. Delegation of 301(h) decisionmaking authority. EPA explained in the preamble to the proposed amendments (47 FR 24925) that authority for 301(h) decisionmaking for certain applications would be delegated to the EPA Regional Administrators. One commenter recommended that tentative decisionmaking on existing larger applicants should be added to the delegation to the Regional Administrators.

Evaluation of all existing, larger 301(h) applications has already been substantially completed. Because of the substantial review effort already invested in these larger applications and the need for continuity, EPA has elected to retain authority for these applications with the Administrator. However, as in the past, preparation of draft 301(h)

modified NPDES permits implementing decisions tentatively approving 301(h) variances for these existing larger applications will be the responsibility of the Regional Administrator.

2. Small applicant notification and assistance. One commenter suggested that EPA directly notify small applicants of the opportunity to request a 301(h) variance and further suggested EPA provide small communities with technical assistance in preparing their applications.

EPA Regions have already been requested to contact the appropriate State agencies so that the States might develop a list of potential 301(h) applicants. Further, EPA Regions were subsequently provided with copies of the final and proposed amendments to the 301(h) regulations, the June 16, 1982, 301(h) public meetings notice, and copies of the Technical Support Document and Monitoring Guidance for delivery to the States and ultimate distribution to potential applicants by the States. Accordingly, EPA has already taken extra steps to notify potential applicants directly, regardless of their size.

The Technical Support Document was drafted to provide small applicants with detailed step-by-step advisory instructions on how to fill out the application questionnaires. In addition, the preamble to the proposed regulations (47 FR 24924) as well as the proposed application questionnaires encouraged applicants to consult with EPA prior to submitting their applications. Although application preparation remains the sole responsibility of the applicant, EPA again reiterates that applicants may consult with EPA prior to submitting an application. Such contacts should be directed to the appropriate EPA Regional office. Thus, EPA believes that an adequate communications and assistance effort has already been implemented for the benefit of potential applicants.

3. Relative Impacts of Secondary and Less-Than-Secondary Effluents. One commenter recommended that the 301(h) regulations provide for evaluation of the relative environmental impacts of secondary treatment discharges and less-than-secondary treatment discharges. The commenter noted that the adverse impacts projected to result from an applicant's proposed discharge would result in denial of the variance request even though the adverse impacts might persist after upgrading to full secondary treatment.

Section 301(h) requires a demonstration that the proposed discharge will protect the receiving

water's biological communities and beneficial uses. The statute does not authorize a comparison of the relative impacts of the proposed discharge and a full secondary treatment discharge in decision, making on a 301(h) variance. See, 44 FR 34803. Also, if projected adverse impacts persist at full secondary treatment levels, the appropriate conclusion is that more treatment may be necessary rather than less treatment. Accordingly, EPA cannot accommodate this comment.

4. Overall Impacts of the 301(h) Regulation. Although several comments generally favored the proposed 301(h) regulations, two commenters believed that the 301(h) regulatory restrictions are an obstacle, not intended by Congress, to the realization of the benefits of 301(h) and recommended deletion of all restrictive limitations. As explained in EPA's reply to PLF's September 11, 1981, rulemaking petition, EPA believes that the regulations and applicant questionnaires are necessary to implement section 301(h) effectively. Additionally, the 1979 Regulations were challenged in Court and, with three exceptions, were found to implement the statute faithfully. Since the amended regulations are fully responsive to the results of the lawsuit and statutory amendments and are being simplified and clarified, EPA believes that these 301(h) regulations represent a reasonable and equitable implementation of section 301(h).

V. Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirements of a Regulatory Impact Analysis. Since these amendments do not cause cost or other adverse impacts as set forth in the Executive Order, they do not constitute a major regulation. Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all regulations that may have a significant impact on a substantial number of small entities. These regulations simplify data requirements and reduce the cost burden for small applicants. Therefore, EPA concludes that the regulations will not have a significant economic impact on a substantial number of small entities, and has not prepared a Regulatory Flexibility Act analysis.

Information collection requirements contained in the proposed regulations were submitted to OMB under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and were approved and assigned OMB

control number 2000-0427. In accordance with the Paperwork Reduction Act, changes in the reporting and recordkeeping provisions from the proposed regulations have been submitted for approval to OMB under section 3504(h) of the Act. Those changes are not effective until OMB approval has been obtained. A notice of that approval will be published in the Federal Register.

Lists of Subjects

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 125

Water pollution control, Waste treatment and disposal.

Dated: November 16, 1982.

John W. Hernandez, Jr.

Acting Administrator.

For the reasons set out in the preamble, Parts 124 and 125 of Title 40 of the Code of Federal Regulations are amended as set forth below.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

40 CFR Part 125 is amended as follows:

1. The authority citation for 40 CFR Part 125, Subpart G reads as follows:

Authority: Clean Water Act, Sections 301, 304, 501, Pub. L. 92-500, 86 Stat. 816, as amended by, Pub. L. 95-217, 91 Stat. 1566, as amended by, Pub. L. 97-117, 95 Stat. 1623 (33 U.S.C. 1311, 1314, 1361).

2. 40 CFR Part 125, Subpart G is revised to read as follows:

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Sec.

125.56 Scope and purpose.

125.57 Law governing issuance of a section 301(h) modified permit.

125.58 Definitions.

125.59 General.

125.60 Existence of and compliance with applicable water quality standards.

125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities.

125.62 Establishment of a monitoring program.

125.63 Effect of discharge on other point and nonpoint sources.

125.64 Toxics control program.

Sec.

125.65 Increase in effluent volume or amount of pollutants discharged.

125.66 [Reserved]

125.67 Special conditions for section 301(h) modified permits.

Appendix A—Small Applicant Questionnaire for Modification of Secondary Treatment Requirements

Appendix B—Large Applicant Questionnaire for Modification of Secondary Treatment Requirements

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

§ 125.56 Scope and purpose.

This Subpart establishes the criteria to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a section 301(h) modification of the secondary treatment requirements. ("section 301(h) modified permit").

§ 125.57 Law governing issuance of a section 301(h) modified permit.

(a) Section 301(h) of the Clean Water Act provides that:

The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit.

For the purposes of this subsection the phrase "the discharge of any pollutant into

marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

(b) Section 301(j)(1) of the Clean Water Act provides that:

Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981;

(c) Section 22(e) of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Pub. L. 97-117, provides that:

The amendments made by this section shall take effect on the date of enactment of this Act, except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act shall receive such permit during the one-year period which begins on the date of enactment of this Act.

§ 125.58 Definitions.

For the purpose of this subpart:

(a) "Administrator" means the EPA Administrator or a person designated by the EPA Administrator.

(b) "Altered discharge" means any discharge other than a current discharge or improved discharge, as defined in this regulation.

(c) "Applicant" means an applicant for a section 301(h) modified permit. Large applicants have populations contributing to their POTWs equal to or more than 50,000 people or average dry weather flows of 5.0 millions gallons per day (mgd) or more; small applicants have contributing populations of less than 50,000 people and average dry weather flows of less than 5.0 mgd. For the purposes of this definition the contributing population and flows shall be based on projections for the end of the five year permit term. Average dry weather flows shall be the average daily total discharge flows for the maximum month of the dry weather season.

(d) "Application" means a final application previously submitted in accordance with the June 15, 1979, section 301(h) regulations (44 FR 34784) or an application submitted between December 29, 1981 and December 29, 1982. It does not include a preliminary application submitted in accordance with the June 15, 1979, section 301(h) regulations.

(e) "Application questionnaire" means EPA's "Applicant Questionnaire for Modification of Secondary Treatment Requirements". Individual questionnaires for small applicants and for large applicants are published as Appendix A and Appendix B to this subpart, respectively.

(f) "Balanced, indigenous population" means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(g) "Current discharge" means the volume, composition, and location of an applicant's discharge as of anytime between December 27, 1977, and December 29, 1982, as designated by the applicant.

(h) "Improved discharge" means the volume, composition and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements to treatment levels or discharge characteristics; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system or to eliminate or control the introduction of pollutants into the applicant's treatment works.

(i) "Industrial source" means any source of nondomestic pollutants regulated under section 307 (b) or (c) of the Clean Water Act which discharges into a POTW.

(j) "Modified discharge" means the volume, composition and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested. A modified discharge may be a current discharge, improved discharge, or altered discharge.

(k) "Nonindustrial source" means any source of pollutants which is not an industrial source.

(l) "Ocean waters" means those coastal waters landward of the baseline of the territorial seas, the deep waters of the territorial seas, or the waters of the contiguous zone.

(m) "Pesticides" means demeton, guthion, malathion, mirex, methoxychlor and parathion.

(n) "Public water supplies" means water distributed from a public water system.

(o) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. This term includes (1) any collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(p) "Publicly owned treatment works" (POTW) means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality or intermunicipal or interstate agency.

(q) "Saline estuarine waters" means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(r) "Secondary treatment" means the term as defined in 40 CFR Part 133.

(s) "Shellfish, fish and wildlife" means any biological population or community that might be adversely affected by the applicant's modified discharge.

(t) "Stressed waters" means those receiving environments in which an applicant can demonstrate to the satisfaction of the Administrator, that the absence of a balanced, indigenous population is caused solely by human perturbations other than the applicant's modified discharge.

(u) "Toxic pollutants" means those substances listed in 40 CFR 401.15.

(v) "Water quality standards" means applicable water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act.

(w) "Zone of initial dilution" (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than

allowed by mixing zone restrictions in applicable water quality standards.

§ 125.59 General

(a) *Basis for application.* An application under this Subpart shall be based on a current, improved, or altered discharge into ocean waters or saline estuarine waters

(b) *Prohibitions.* No section 301(h) modified permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this Subpart and Part 122;

(2) For the discharge of sewage sludge; and

(3) where such issuance would conflict with applicable provisions of State, local, or other Federal laws or Executive Orders. This includes compliance with the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

(c) *Applications.* Each applicant for a modified permit under this Subpart shall submit an application to EPA signed in compliance with 40 CFR 122.6(a)(3) which shall contain:

(1) A signed, completed NPDES Application Standard form A, Parts I, II, III;

(2) A completed Application Questionnaire;

(3) The following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s) and, based on my inquiry of those individuals immediately responsible for obtaining the information, I am convinced that the information is true, accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(d) *Revisions to applications.* (1) POTWs which submitted applications in accordance with the June 15, 1979, Regulations (44 FR 34784) may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with section 125.59(e)(2)(i); and

(2) Other applicants may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(e)(3)(i). Revisions by such applicants which propose downgrading treatment levels

and/or outfall and diffuser location and design must be justified on the basis of substantial changes in circumstances beyond the applicant's control since the time of application submission.

(3) Applicants authorized or requested to submit additional information under § 125.59(f) may submit a revised application in accordance with § 125.59(e)(2)(ii) where such additional information supports changes in proposed treatment levels and/or outfall location and diffuser design. The opportunity for such revision shall be in addition to the one-time revision allowed under § 125.59(d) (1) and (2).

(4) POTWs which revise their applications must:

(i) Modify their NPDES form and Application Questionnaire as needed to assure that the information filed with their application is correct and complete;

(ii) Provide additional analysis and data as needed to demonstrate compliance with this subpart;

(iii) Obtain new State determinations under §§ 125.60(b)(2) and 125.63(b); and

(iv) Provide the certification described in paragraph (c)(3) of this section.

(e) *Deadlines and distribution.*

(1) Applications. (i) The original and one copy of an application must be submitted to the appropriate EPA Regional Administrator no later than December 29, 1982, and one copy to the Office of Marine Discharge Evaluation, WH-546, U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

(ii) A copy of the application must be provided to the State and interstate agency(s) authorized to provide certification/concurrence under § 124.53-124.55 on or before the date of the application is submitted to EPA.

(2) Revisions to applications.

(i) Applicants desiring to revise their applications under § 125.59(d) (1) or (2) must:

(A) Submit to the appropriate Regional Administrator a letter of intent to revise their application and a copy to the Office of Marine Discharge Evaluation either within 45 days of the date of EPA's tentative decision on their original application, or within 45 days of promulgation of this provision if a tentative decision has already been made, whichever is later. Following receipt by EPA of a letter of intent, further EPA proceedings on the tentative decision under 40 CFR Part 124 will be stayed.

(B) Submit the revised application as described for new applications in § 125.59(e)(1) either within one year of the date of EPA's tentative decision on

their original application or within one year of promulgation of this provision if a tentative decision has already been made, whichever is later.

(ii) Applicants desiring to revise their applications under § 125.59(d)(3) must submit the revised application as described for new applications in § 125.59(e)(1) of this section concurrent with submission of the additional information under § 125.59(f).

(3) State determination deadline. State determinations, as required by § 125.60(b)(2) and § 125.63(b) shall be filed by the applicant with the appropriate Regional Administrator, no later than 90 days after submission of the application or revision to EPA. Extensions to this deadline may be provided by EPA upon request. However, EPA will not begin review of the application or revision until a favorable State determination is received by EPA.

(f)(1) The Administrator may authorize or request an applicant to submit additional information by a specified date not to exceed one year from the date of authorization or request.

(2) Applicants seeking authorization to submit additional information on current/modified discharge characteristics, water quality, biological conditions or oceanographic characteristics must:

(i) Demonstrate that they made a diligent effort to provide such information with their application and were unable to do so, and

(ii) Submit a plan of study, including a schedule, for data collection and submittal of the additional information. EPA will review the plan of study and may require revisions prior to authorizing submission of the additional information.

(g) Decisions on section 301(h) modifications. (1) The decision to grant or deny a section 301(h) modification shall be made by the Administrator and shall be based on the applicant's demonstration that it has met all the requirements of §§ 125.59 through 125.65.

(2) No section 301(h) modified permit shall be issued until the appropriate State certification/concurrence is granted or waived pursuant to § 124.54 or if the State denies certification/concurrence pursuant to § 124.54.

(3) In the case of a modification issued to an applicant in a State administering an approved permit program under 40 CFR Part 123, the State Director may:

(i) Revoke an existing permit as of the effective date of the EPA issued section 301(h) modified permit; and

(ii) Cosign the section 301(h) modified permit, if the Director has indicated an intent to do so in the written concurrence.

(4) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in 40 CFR Part 124, except that, because section 301(h) permits may only be issued by EPA, the terms "Administrator or a person designated by the Administrator" shall be substituted for the term "Director" as appropriate; and

(ii) Contain all applicable terms and conditions set forth in 40 CFR Part 122 and § 125.67.

(5) Appeals of section 301(h) determinations shall be governed by the procedures in 40 CFR Part 124.

(6) At the expiration of the section 301(h) modified permit, the POTW should be prepared to support the continuation of the modification based on studies and monitoring performed during the life of the permit. Upon a demonstration meeting the statutory criteria and requirements of this subpart, the permit may be renewed under the applicable procedures of 40 CFR Part 124.

§ 125.60 Existence of and compliance with applicable water quality standards.

(a) There must exist a water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) Water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) Water quality standards for suspended solids, turbidity, light transmission, light scattering or maintenance of the euphotic-zone; and

(3) Water quality standards for pH.

(b) The applicant must:

(1) Demonstrate that the modified discharge will comply with the above water quality standard(s); and

(2) Provide a determination signed by the State or interstate agency(s) authorized to provide certification under §§ 124.53 and 124.54 that the proposed modified discharge will comply with applicable provisions of State law including applicable water quality standards. This determination shall include a discussion of the basis for the conclusion reached.

§ 125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities.

(a) *Physical characteristics of discharge.* (1) The applicant's outfall and diffuser must be located and

designed to provide adequate initial dilution, dispersion and transport of wastewater to meet all applicable water quality standards at and beyond the boundary of the zone of initial dilution:

(i) During periods of maximum stratification and

(ii) During other periods when discharge characteristics, water quality, biological seasons, or oceanographic conditions indicate more critical situations may exist.

(2) Following initial dilution, the partially diluted wastewater and particulates must be transported and dispersed so as not to affect water use areas adversely (including recreational and fishing areas) and areas of biological sensitivity.

(b) *Impact of discharge on public water supplies.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(2) The applicant's modified discharge must not:

(i) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or

(ii) Have the effect of requiring treatment over and above that which would be necessary in the absence of such discharge in order to comply with local, and EPA drinking water standards.

(c) *Biological impact of discharge.* (1) The applicants modified discharge must allow for the attainment or maintenance of water quality which assures protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(2) A balanced, indigenous population of shellfish, fish and wildlife must exist:

(i) Immediately beyond the zone of initial dilution of the applicant's modified discharge and;

(ii) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(3) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenters, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution.

(4) In addition, for modified discharges into saline estuarine water:

(i) Benthic populations within the zone of initial dilution must not differ substantially from the balanced,

indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(ii) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(iii) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(d) *Impact of discharge on recreational activities.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, and picnicking and sports activities along shorelines and beaches.

(2) There must be no Federal, State, or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(e) Additional requirements for applications based on improved or altered discharges. An application for a section 301(h) modified permit on the basis of an improved or altered discharge must include:

(1) A demonstration that such improvements or alterations have been thoroughly planned and studied and can be completed or implemented expeditiously;

(2) Detailed analyses projecting changes in average and maximum monthly flow rates and composition of the applicant's discharge which are expected to result from proposed improvements or alterations.

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge;

(4) A detailed analysis of how the applicant's planned improvements or alterations will comply with the requirements of paragraphs (a) through (d) of this section.

(f) Stressed waters. If an applicant believes that its failure to meet the requirements of paragraphs (a) through (e) of this section is attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff and the applicant's previous discharges), the applicant must demonstrate, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.62 Establishment of a monitoring program.

(a) *General requirements.* (1) The applicant must:

(i) Have a monitoring program designed to provide data to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards, and measure toxic substances in the discharge;

(ii) Describe the sampling techniques, schedules and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used in the monitoring program;

(iii) Demonstrate that it has the resources necessary to implement the program upon issuance of the modified permit and to carry it out for the life of the modified permit; and

(iv) Determine the frequency and extent of the monitoring program taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water quality, marine biota, and designated water uses.

(2) The Administrator may require revision of the proposed monitoring program before issuing a modified permit and during the term of any modified permit.

(b) *Biological monitoring program.* The biological monitoring program for both small and large applicants shall provide data adequate to evaluate the impact of the modified discharge on the marine biota.

(1) Biological monitoring shall include to the extent practicable:

(i) Periodic surveys of the biological communities and populations which are most likely affected by the discharge to enable comparisons with baseline conditions described in the application and verified by sampling at the control stations/reference sites during the periodic surveys;

(ii) Periodic determinations of the accumulation of toxic pollutants and pesticides in organisms and examination of adverse effects, such as disease, growth abnormalities, physiological stress or death;

(iii) Sampling of sediments in areas of solids deposition in the vicinity of the ZID, in other areas of expected impact, and at appropriate reference sites to support the water quality and biological surveys and to measure the accumulation of toxic pollutants and pesticides; and

(iv) Where the discharge would affect commercial or recreational fisheries, periodic assessments of the conditions and productivity of fisheries.

(2) Small applicants are not subject to the requirements of paragraph (b)(1)(ii)-(iv) of this section if they discharge at depths greater than 10 meters and can demonstrate through a suspended solids deposition analysis that there will be negligible seabed accumulation in the vicinity of the modified discharge.

(3) For applicants seeking a section 301(h) modified permit based on:

(i) A current discharge, biological monitoring shall be designed to demonstrate ongoing compliance with the requirements of § 125.61(c);

(ii) An improved discharge or altered discharge other than outfall relocation, biological monitoring shall provide baseline data on the current impact of the discharge and data which demonstrate, upon completion of improvements or alterations, that the requirements of § 125.61(c) are met; or

(iii) An improved or altered discharge involving outfall relocation, the biological monitoring shall:

(A) Include the current discharge site until such discharge ceases; and

(B) Provide baseline data at the relocation site to demonstrate the impact of the discharge and to provide the basis for demonstrating that requirements of § 125.61(c) will be met.

(c) *Water quality monitoring program.* The water quality monitoring program shall to the extent practicable:

(1) Provide adequate data for evaluating compliance with applicable water quality standards;

(2) Measure the presence of toxic pollutants which have been identified or reasonably may be expected to be present in the discharge.

(d) *Effluent monitoring program.* In addition to the requirements of 40 CFR Part 122, to the extent practicable, monitoring of the POTW effluent shall provide quantitative and qualitative data which measure toxic substances and pesticides in the effluent and the effectiveness of the toxics control program.

§ 125.63 Effect of discharge on other point and nonpoint sources.

(a) No modified discharge may result in any additional pollution control

requirements on any other point or nonpoint source.

(b) The applicant shall obtain a determination from the State or interstate agency(s) having authority to establish wasteload allocations indicating whether the applicant's discharge will result in an additional treatment, pollution control, or other requirement on any other point or nonpoint sources. The State determination shall include a discussion of the basis for its conclusion.

§ 125.64 Toxics control program.

(a) Chemical analysis. (1) The applicant shall submit at the time of application a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58 (u) and (m). The analysis shall be performed on two 24 hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute chemical analyses if composition of the supplemental or substitute samples typifies that which occurs during dry and wet weather conditions.

(2) Unless required by the State, this requirement shall not apply to any small section 301(h) applicant which certifies that there are no known or suspected sources of toxic pollutants or pesticides and documents the certification with an industrial user survey as described by 40 CFR 403.8(f)(2).

(b) Identification of sources. The applicant shall submit at the time of application an analysis of the known or suspected sources of toxic pollutants or pesticides identified in § 125.64(a). The applicant shall to the extent practicable categorize the sources according to industrial and nonindustrial types.

(c) Industrial pretreatment requirements.

(1) An applicant which has known or suspected industrial sources of toxic pollutants shall have an approved pretreatment program, or shall develop an approved pretreatment program by July 1, 1983, or the date established in their NPDES permit, whichever is earlier. *See*, 40 CFR Part 403.

(2) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants or pesticides and so certifies to the Administrator.

(3) The pretreatment program or proposed compliance schedule submitted by the applicant under this section shall be subject to revision as required by the Administrator prior to issuing any section 301(h) modified permit and during the term of any such permit.

(4) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(d) Nonindustrial source control program.

(1) The applicant shall submit a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants and pesticides into its POTW(s) which shall be implemented no later than 18 months after issuance of a 301(h) modified permit.

(2) The applicant shall also develop and implement additional nonindustrial source control programs on the earliest possible schedule. This requirement shall not apply to a small applicant which certifies that there are no known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides in its discharge.

(3) The applicant's nonindustrial source control programs under paragraph (d)(2) of this section shall include the following schedules which are to be implemented no later than 18 months after issuance of a 301(h) modified permits:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants and pesticides; and

(ii) A schedule for the development and implementation of control programs, to the extent practicable, for nonindustrial sources of toxic pollutants and pesticides.

(4) Each proposed nonindustrial source control program and/or schedule submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301(h) modified permit and during the term of any such permit.

§ 125.65 Increase in effluent volume or amount of pollutants discharged.

(a) No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the section 301(h) modified permit.

(b) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged;

(c) The applicant shall provide projections of effluent volume and mass loadings for any pollutants to which the modification applies in 5 year

increments for the design life of its facility.

§ 125.66 [Reserved]

§ 125.67 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR Part 122, the following:

(a) Effluent limitations and mass loadings which will assure compliance with the requirements of this Subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.64(c);

(2) Nonindustrial toxics control program required by § 125.64(d); and

(3) Control of combined sewer overflows required by § 125.65.

(c) Monitoring program requirements that include:

(1) Biomonitoring requirements of § 125.62(b);

(2) Water quality requirements of § 125.62(c);

(3) Effluent monitoring requirements of § 125.62(d).

(d) Reporting requirements that include the results of the monitoring programs required by paragraph (c) at such frequency as prescribed in the approved monitoring program.

Appendix A—Small Applicant Questionnaire for Modification of Secondary Treatment Requirements

I. Introduction

This questionnaire is to be used by small applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A small applicant has a contributing population to its wastewater treatment facility of less than 50,000 and a projected average dry weather flow of less than 5.0 million gallons per day (mgd, 0.22m³/sec) [40 CFR 125.58(c)].

The questionnaire is in two sections, a general information and basic requirements section and a technical evaluation section. Satisfactory completion of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h) and EPA regulations (40 CFR Part 125, Subpart G).

Where applicants diligently try but are unable to collect and submit all the information at the time of application, EPA requires that a plan of study for gathering and submitting the data be provided with the application. 40 CFR 125.59(f) states the procedures governing such post-application data collection activities.

Most small applicants should be able to complete the questionnaire using available information. However, small POTWs with low initial dilution discharging into shallow waters or waters with poor dispersion and transport characteristics, discharging near

distinctive and susceptible biological habitats, or discharging substantial quantities of toxics should anticipate the need to collect additional information and/or conduct additional analyses to demonstrate compliance with section 301(h) criteria. Such small applicants are directed to the related sections in Parts II and III of the large applicant questionnaire and must answer the relevant questions of these sections. If there are questions in this regard, applicants should contact the appropriate EPA Regional Office for guidance.

Guidance for responding to this questionnaire is provided by the Revised Section 301(h) Technical Support Document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application, EPA encourages the applicant to consult with EPA prior to data collection and submission of its application. Such consultation, particularly if the applicant provides a plan of study, will help assure that the proper data are gathered in the most efficient manner.

II. General Information and Basic Data Requirements

Applicants should answer all questions; where your response to a question is "yes", "no", or "not applicable" explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you believe you qualify for a section 301(h) variance.

A. Treatment System Description: 1. Are you applying for a modification based on a current discharge, improved discharge, or altered discharge as defined in 40 CFR 125.58? [40 CFR 125.59(a)]

2. Description of the Treatment/Outfall System [40 CFR 125.61(a) and 125.61(e)]

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you propose to satisfy the requirements of section 301(h) and 40 CFR Part 125, Subpart C. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of the proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a description and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude if different from the proposed outfall.

3. Effluent Limitations and Characteristics [40 CFR 125.60(b) and 125.61(e)(2)]

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD₅), suspended solids, and pH upon which your application for a modification is based:

BOD₅ — mg/l
Suspended solids — mg/l
pH — (range)

b. Provide available data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

- Flow (m³/sec): minimum; average dry weather; average wet weather; maximum; annual average.
- BOD₅ (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.
- Suspended solids (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.
- Toxic pollutants and pesticides (μg/l): list each identified toxic pollutant and pesticide.
- pH: minimum and maximum.
- Dissolved oxygen (mg/l, prior to chlorination) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.
- Immediate dissolved oxygen demand (mg/l).

4. Effluent Volume and Mass Emissions [40 CFR 125.61(e)(2) and 125.65]

a. Provide analyses showing projections of effluent volume (annual average, m³/sec) and mass loadings (mt/year) of BOD₅ and suspended solids for the design life of your treatment facility in five-year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five year permit term for 1) the treatment facility contributing population and 2) the average daily total discharge flow for the maximum month of the dry weather season.

5. Average Daily Industrial Flow (m³/sec) [40 CFR 125.64] Provide or estimate the average daily industrial inflow to your treatment facility for the same time increments as in question II. A. 4. a. above.

6. Combined Sewer Overflows [40 CFR 125.65(b)]

a. Does (will) your collection and treatment system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

7. Outfall/Diffuser Design. Provide available data on the following for your current discharge as well as for the modified discharge, if different from the current discharge: [40 CFR 125.61(a)(1)]

- Diameter and length of the outfall(s) (meters)
- Diameter and length of the diffuser(s) (meters)
- Angle(s) of port orientations from horizontal (degrees)
- Port diameter(s) in meters and the orifice contraction coefficient(s), if known
- Vertical distance in meters from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)
- Number of ports
- Port spacing (meters)
- Design flow rate for each port, if multiple ports are used (m³/sec)

B. Receiving Water Description:

1. Are you applying for a modification based on a discharge to the ocean or to a saline estuary (40 CFR 125.58(q))? [40 CFR 125.59(a)]

2. Is your current discharge or modified discharge to stressed waters? If yes, what are

the pollution sources contributing to the stress? [40 CFR 125.61(f)]

3. Provide a description and available data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). [40 CFR 125.61(a)]

4. Ambient Water Quality Conditions During the Period(s) of Maximum Stratification.

a. Provide available data on the following in the vicinity of the current discharge location and for the modified discharge location if different from the current discharge: [40 CFR 125.60(b)(1)]

- Dissolved oxygen (mg/l)
- Suspended solids (mg/l)
- pH
- Temperature (°C)
- Salinity (ppt)
- Transparency (turbidity, percent light transmittance)
- Other significant parameters (eg, nutrients, toxic pollutants and pesticides, fecal coliforms)

b. Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these other critical periods and provide the data requested in 4.a. for the other critical periods. [40 CFR 125.61(a)(1)]

C. Biological Conditions:

1. a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? [40 CFR 125.61(c)]

b. If yes, provide available information on types, extent, and location of habitats.

2. a. Are commercial or recreational fisheries located in areas potentially affected by the modified discharge? [40 CFR 125.61(c)]

b. If yes, provide available information on types, location, and value of fisheries.

D. State and Federal Laws [40 CFR 125.60]

1. Are there water quality standards applicable to the following pollutants for which a modification is requested:

- Biochemical oxygen demand or dissolved oxygen?
- Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?
- pH of the receiving water?

2. If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. Will the modified discharge [40 CFR 125.59(b)(3)]:

- Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 *et seq.*? (See, 16 U.S.C. 1456(c)(3)(A))
- Be located in a Marine sanctuary designated under Title III of the marine Protection, Research and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 *et seq.* or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C.

1461? If located in a marine sanctuary designated under Title III of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary (See, U.S.C. 1432(f)(2)).

—Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 *et seq*? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat (See, 16 U.S.C. 1536(a)(2)).

4. Are you aware of any State or Federal Laws or regulations (other than the Clean Water Act or the three statutes identified in item 3 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such law(s), regulation(s), or order(s). [40 CFR 125.59(b)(3)]

III. Technical Evaluation

Answers to the following questions will be used to assess the effects of the modified discharge. The responses will be used by the State agency(s) in their determination (as required by 40 CFR 125.60(b)(2) and 125.63(b)) and by EPA in preparing its decision on the applicant's request for a section 301(h) variance.

Your answers to the following questions must be supported by data and responses from Section II of this questionnaire. The analyses and calculations required below must show the input data for all calculations. Applicants should answer all questions; where your answer to a question is "yes", "no" or "not applicable" explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you believe you qualify for a variance.

If EPA decides to check calculations in an application, the formulas and methods provided in the Revised Section 301(h) Technical Support Document may be used for that purpose. If applicants use methods other than those provided in the Technical Support Document, such methods must be described by the applicant.

A. Physical Characteristics of Discharge

(40 CFR 125.61(a)). 1. What is the lowest initial dilution for your current and modified discharge(s) during 1) the period(s) of maximum stratification? and 2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. Will there be significant sedimentation of suspended solids in the vicinity of the modified discharge?

B. Compliance with Applicable Water Quality Standards: [40 CFR 125.60(b) and 125.61(a)]

1. What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge

volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

4. Does (will) the modified discharge comply with applicable water quality standards for:

—Dissolved oxygen?

—Suspended solids or surrogate standards?

—pH?

5. Provide the determination required by 40 CFR 125.60(b)(2) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. Impact on Public Water Supplies [40 CFR 125.61(b)]:

1. Is there a planned or existing public water supply (desalinization facility) intake in the vicinity of the current or modified discharge?

2. If yes,

(a) What is the location of the intake(s) (latitude and longitude)?

(b) Will the modified discharge(s) prevent use of the intake(s) for public water supply?

(c) Will the modified discharge(s) cause increased treatment requirements for the public water supply(s) to meet local, State, and EPA drinking water standards?

D. Biological Impact of Discharge [40 CFR 125.61(c)]:

1. Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

(a) Immediately beyond the ZID of the current and modified discharge(s)?

(b) In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. Have commercial or recreational fisheries been impacted adversely (e.g., warnings, restrictions, closures, or mass mortalities) by the current discharge and will they be impacted adversely by the modified discharge?

4. For discharges into saline estuarine waters: [40 CFR 125.61(c)(4)]

(a) Does or will the current or modified discharge cause substantial differences in the benthic population with the ZID and beyond the ZID?

(b) Does or will the current or modified discharge interfere with migratory pathways within the ZID?

(c) Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the ZID?

5. For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)].

6. For altered discharge(s), will the altered discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)]

7. If your current discharge is to stressed waters, does or will your current or modified discharge: [40 CFR 125.61(f)]

(a) Contribute to, increase, or perpetuate such stressed condition?

(b) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?

(c) Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. Impacts of Discharge on Recreational Activities: [40 CFR 125.61(d)]

1. Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliforms.

3. Are there any Federal, State or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. Establishment of a Monitoring Program [40 CFR 125.62]:

(1) Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.62.

(2) Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

(3) Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. Effect of Discharge on Other Point and Nonpoint Sources: (40 CFR 125.63).

1. Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. Provide the determination required by 40 CFR 125.63(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. Toxics Control Program [40 CFR 125.64]

1. a. Do you have any known or suspected industrial sources of toxic pollutants and pesticides?

b. If no, provide the certification required by 40 CFR 125.64(a)(2).

c. If yes, provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides.

d. Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in (1)(c) above.

2. Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.
b. If no, and if required by 40 CFR Part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR Part 403.

3. Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system.

4. a. Are there any known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides from your modified discharge(s)?

b. If no, provide the certification required by 40 CFR 125.64(d)(2) together with available supporting data.

c. If yes, provide a schedule for development and implementation of nonindustrial toxics control programs to meet the requirements of 40 CFR 125.64(d)(3).

Appendix B—Large Applicant Questionnaire for Modification of Secondary Treatment Requirements

I. Introduction

This questionnaire is to be used by large applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A large applicant has a population contributing to its wastewater treatment facility of at least 50,000 or a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 m³/sec) [40 CFR 125.58(c)].

The questionnaire is in two sections, a general information and basic requirements section and a technical evaluation section. Satisfactory completion of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h) and EPA regulations (40 CFR Part 125, Subpart G).

Where applicants diligently try but are unable to collect and submit all the information at the time of application, EPA requires that a plan of study for gathering and submitting the data be provided with the application. 40 CFR 125.59(f) states the procedures governing such post-application data collection activities.

Guidance for responding to the questions is provided by the Revised Section 301(h) Technical Support Document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application, EPA encourages the applicant to consult with EPA prior to data collection and submission of its application. Such consultation, particularly if the applicant provides a plan of study, will help assure that the proper data are gathered in the most efficient manner.

II. General Information and Basic Data Requirements

Applicants should answer all questions; where your response to a question is "yes", "no", or "not applicable" explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you

believe you qualify for a section 301(h) variance.

A. *Treatment System Description*: 1. Are you applying for a modification based on a current discharge, improved discharge, or altered discharge as defined in 40 CFR 125.58? [40 CFR 125.59(a)]

2. Description of the Treatment/Outfall System [40 CFR 125.61(a) and 125.61(e)]

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you propose to satisfy the requirements of section 301(h) and 40 CFR Part 125, Subpart G. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of the proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a description and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude, if different from the proposed outfall.

3. Effluent Limitations and Characteristics [40 CFR 125.60(b) and 125.61(e)(2)]

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD₅), suspended solids, and pH upon which your application for a modification is based:

BOD₅ ——— mg/l

Suspended solids ——— mg/l

pH ——— (range)

b. Provide data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

Flow (m³/sec): minimum; average dry weather; average wet weather; annual average; maximum.

BOD₅ (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.

Suspended solids (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.

Toxic pollutants and pesticides (ug/l): list each identified toxic pollutant and pesticide. pH: minimum and maximum.

Dissolved oxygen (mg/l, prior to chlorination) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.

Immediate dissolved oxygen demand (mg/l)

4. Effluent Volume and Mass Emissions [40 CFR 125.61(e)(2) and 125.65]

a. Provide detailed analyses showing projections of effluent volume (annual average, m³/sec) and mass loadings (mt/year) of BOD₅ and suspended solids for the design life of your treatment facility in five-year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five year permit term for 1) the treatment facility contributing population and 2) the average daily total discharge flow for the maximum month of the dry weather season.

5. Average Daily Industrial Flow (m³/sec) [40 CFR 125.64] Provide or estimate the

average daily industrial inflow to your treatment facility for the same time increments as in question II. A. 4. a. above.

6. Combined Sewer Overflows [40 CFR 125.65(b)]

a. Does (will) your collection and treatment system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

7. Outfall/Diffuser Design. Provide the following data for your current discharge as well as for the modified discharge, if different from the current discharge: [40 CFR 125.61(a)(1)]

Diameter and length of the outfall(s) (meters)

Diameter and length of the diffuser(s) (meters)

Angle(s) of port orientations from horizontal (degrees)

Port diameter(s) in meters and the orifice contraction coefficient(s), if known.

Vertical distance in meters from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)

Number of ports

Port spacing (meters)

Design flow rate for each port, if multiple ports are used (m³/sec)

B. *Receiving Water Description*: 1. Are you applying for a modification based on a discharge to the ocean or to a saline estuary (40 CFR 125.58(q))? [40 CFR 125.59(a)]

2. Is your current discharge or modified discharge to stressed waters? If yes, what are the pollution sources contributing to the stress? [40 CFR 125.61(f)]

3. Provide a description and data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). [40 CFR 125.61(a)]

4. Oceanographic Conditions in the Vicinity of the Current and Proposed Modified Discharge(s).

Provide data on the following: [40 CFR 125.61(a)]

Lowest ten percentile current speed (m/sec)

Predominant current speed (m/sec) and direction (true) during the four seasons

Period(s) of maximum stratification (months)

Period(s) of natural upwelling events (duration and frequency, months)

Density profiles during period(s) of maximum stratification

5. Ambient Water Quality Conditions During the Period(s) of Maximum Stratification: at the zone of initial dilution (ZID) boundary, at other areas of potential impact, and at control stations: [40 CFR 125.61(a)(2)]

a. Provide profiles (with depth) on the following for the current discharge location and for the modified discharge location, if different from the current discharge:

BOD₅ (mg/l)

Dissolved oxygen (mg/l)

Suspended solids (mg/l)

pH

Temperature (°C)

Salinity (ppt)

Transparency (turbidity, percent light transmittance)

Other significant parameters (e.g., nutrients, toxic pollutants and pesticides, fecal coliforms)

b. Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these other critical periods and provide the data requested in 5.a. for the other critical period(s). [40 CFR 125.61(a)(1)]

6. Provide data on steady state sediment dissolved oxygen demand and dissolved oxygen demand due to resuspension of sediments in the vicinity of your current and modified discharge(s) (mg/l/day).

C. *Biological Conditions*: 1. Provide a detailed description of representative biological community (eg, plankton, macrobenthos, demersal fish, etc.) in the vicinity of your current and modified discharge(s): within the ZID, at the ZID boundary, at other areas of potential, discharge-related impact, and at reference (control) sites. Community characteristics to be described shall include (but not be limited to) species composition; abundance; dominance and diversity; spatial/temporal distribution; growth and reproduction; disease frequency; trophic structure and productivity patterns; presence of opportunistic species; bioaccumulation of toxic materials; and the occurrence of mass mortalities.

2. a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? [40 CFR 125.61(c)]

b. If yes, provide information on type, extent, and location of habitats.

3. a. Are commercial or recreational fisheries located in areas potentially affected by the discharge? [40 CFR 125.61(c)]

b. If yes, provide information on types, location, and value of fisheries.

D. *State and Federal Laws* [40 CFR 125.60]

1. Are there water quality standards applicable to the following pollutants for which a modification is requested:

Biochemical oxygen demand or dissolved oxygen?

Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?

pH of the receiving water?

2. If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. Will the modified discharge: [40 CFR 125.59(b)(3)]

Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 *et seq.*? (See, 16 U.S.C. 1456(c)(3)(A)).

Be located in a marine sanctuary designated under Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 *et seq.* or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C. 1461? If located in a marine sanctuary designated under Title III

of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary (See, 16 U.S.C. 1432(f)(2)).

Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 *et seq.*? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat (See, 16 U.S.C. 1536(a)(2)).

4. Are you aware of any State or Federal Laws or regulations (other than the Clean Water Act or the three statutes identified in item 3 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such law(s), regulations, or order(s). [40 CFR 125.59(b)(3)]

III. *Technical Evaluation*

Answers to the following questions will be used to assess the effects of the modified discharge. The responses will be used by the State agency(s) in their determination (as required by 40 CFR 125.60(b)(2) and 125.63(b)), and by EPA in preparing its decision on the applicant's request for a section 301(h) variance.

Your answers to the following questions must be supported by data and responses from Section II of this questionnaire. The analyses and calculations required below must show the input data for all calculations. Applicants should answer all questions; where your answer to a question is "yes", "no", or "not applicable", explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you believe you qualify for a variance.

If EPA decides to check calculations in an application, the formulas and methods provided in the Revised Section 301(h) Technical Support Document may be used for that purpose. If applicants use methods other than those provided in the Technical Support Document, such methods must be described by the applicant.

A. *Physical Characteristics of Discharge* [40 CFR 125.61(a)]: 1. What is the critical initial dilution for your current and modified discharge(s) during 1) the period(s) of maximum stratification? and 2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. What are the effects of ambient currents and stratification on dispersion and transport of the discharge plume/wastefield?

4. Sedimentation of suspended solids.

a. What fraction of the modified discharge's suspended solids will accumulate within the vicinity of the modified discharge?

b. What are the calculated area(s) and rate(s) of sediment accumulation within the vicinity of the modified discharge(s) (g/m²/yr)?

c. What is the fate of settleable solids transported beyond the calculated sediment accumulation area?

B. *Compliance with Applicable Water Quality Standards* [40 CFR 125.60(b) and 125.61(a)]:

1. What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. What are the dissolved oxygen depressions and concentrations due to steady sediment demand and resuspension of sediments?

4. What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

5. What is the change in receiving water pH immediately following initial dilution of the modified discharge(s)?

6. Does (will) the modified discharge comply with applicable water quality standards for:

Dissolved oxygen?

Suspended solids or surrogate standards? pH?

7. Provide the determination required by 40 CFR 125.60(b)(2) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. *Impact on Public Water Supplies* [40 CFR 125.61(b)]:

1. Is there a planned or existing public water supply (desalinization facility) intake in the vicinity of the current or modified discharge?

2. If yes,

a. What is the location of the intake(s) (latitude and longitude)?

b. Will the modified discharge(s) prevent use of the intake(s) for public water supply?

c. Will the modified discharge(s) cause increased treatment requirements for the public water supply(s) to meet local, State, and EPA drinking water standards?

D. *Biological Impact of Discharge* [40 CFR 125.61(c)]:

1. Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

a. Immediately beyond the ZID of the current and modified discharge(s)?

b. In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. Have commercial or recreational fisheries been impacted adversely by the current discharge (e.g., warnings, restrictions, closures, or mass mortalities) or will they be impacted adversely by the modified discharge?

4. Does the current or modified discharge cause the following within or beyond the ZID: [40 CFR 125.61(c)(3)]

a. Mass mortality of fishes or invertebrates due to oxygen depletion, high concentrations of toxics or other conditions?

b. An increased incidence of disease in marine organisms?

c. An abnormal body burden of any toxic material in marine organisms?

d. Any other extreme, adverse biological impacts?

5. For discharges into saline estuarine waters: [40 CFR 125.61(c)(4)]

a. Does or will the current or modified discharge cause substantial differences in the benthic population within the ZID and beyond the ZID?

b. Does or will the current or modified discharge interfere with migratory pathways within the ZID?

c. Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the ZID?

6. For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)]

7. For altered discharge(s), will the altered discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)]

8. If your current discharge is to stressed waters, does or will your current or modified discharges: [40 CFR 125.61(f)]

a. Contribute to, increase, or perpetuate such stressed condition?

b. Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?

c. Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. *Impacts of Discharge on Recreational Activities* [40 CFR 125.61(d)]:

1. Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliforms.

3. Are there any Federal, State or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. *Establishment of a Monitoring Program* (40 CFR 125.62):

1. Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.62.

2. Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

3. Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. *Effect of Discharge on Other Point and Nonpoint Sources* (40 CFR 125.63):

1. Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. Provide the determination required by 40 CFR 125.63(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. *Toxics Control Program* (40 CFR 125.64):

1. a. Do you have any known or suspected industrial sources of toxic pollutants or pesticides?

b. If no, provide the certification required by 40 CFR 125.64(c)(2).

2. Provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides as required by 40 CFR 125.64(a)(1).

3. Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in 2. above.

4. Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR Part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR Part 403.

5. Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system.

6. Provide a schedule for development and implementation of a nonindustrial toxics control program to meet the requirements of 40 CFR 125.64(d)(3).

PART 124—[AMENDED]

3. The authority citation for Part 124 reads as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*, and Clean Air Act, 42 U.S.C. 1857 *et seq.*

§ 124.65 [Removed and Reserved]

4. 40 CFR Part 124 is amended by removing and reserving § 124.65.

[FR Doc. 82-32407 Filed 11-24-82; 8:45 am]

BILLING CODE 6560-50-M

**United States
Federal Reserve**

**Friday
November 26, 1982**

Part VII

**Department of the
Interior**

National Park Service

**Native American Relationships Policy;
Management Policy**

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Relationships Policy; Management Policy

AGENCY: National Park Service, Interior.

ACTION: Proposed revised management policy with request for comments.

SUMMARY: The National Park Service is proposing a revised management policy on Native American Relationships which will replace Special Directive 78-1 *Policy Guidelines for Native American Cultural Resources Management*. Groups covered by this action are American Indians, Eskimos and Aleuts in North America, Native Hawaiians, Native Samoans and Chamorros in Guam and in the Northern Marianas Islands. This policy will provide guidance to NPS personnel for management actions dealing with Native Americans. The policy emphasizes implementation of such activity in a knowledgeable, aware and sensitive manner. Enactment of this policy will clarify NPS parameters and responsibilities in this area and will reflect Service responsiveness to current socio-economic trends and management needs.

DATES: Written comments, suggestions or objections will be accepted until March 1, 1983.

ADDRESS: Comments should be directed to: Chief, Office of Management Policy, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Geraldine Smith, Office of Management Policy, 343-7468; Jackson W. Moore Jr., Anthropology Division, 523-0095.

SUPPLEMENTARY INFORMATION:**Background**

The National Park Service is proposing a revised policy to replace Special Directive (SD) 78-1 *Policy Guidelines for Native American Cultural Resources Management*. This proposed policy expands and clarifies SD 78-1, incorporates management needs identified by a Service task force and the Service's response to the policy guidance provided in Pub. L. 95-341, the American Indian Religious Freedom Act. The policy expands on access and use; definition of terms; Native American involvement in planning and resources management and clarifies responsibilities of park and regional staff; acquisition, maintenance, utilization and disposition of artifacts; and sacred sites. The policy also addresses practice of Native Religion; taking of natural resources; burial and

cemetery sites; anthropological and archeological studies; and interpretation of Native American history and prehistory.

The Service has always recognized and sought to accommodate the requests of Native Americans to use certain areas of the national park system for the exercise of religious activities and the continuation of cultural traditions. However, permitting of such uses must be within the bounds of existing Service rules and policies which implement the legislative mandates of the Service to protect and preserve the natural and cultural resources of the parks and to provide for their use and enjoyment by present and future generations.

The Service is hereby soliciting comment from any and all interested groups or individuals in this policy. We urge you to be specific in how the policy might be changed or strengthened. All comments will be reviewed and, where appropriate, incorporated. The policy will remain on review for a period of 90 days. The revised proposed policy and an explanation of how comments were addressed will be published in the *Federal Register* following this comment period. The policy, in its final form will become a part of the National Park Service Management Policies.

Dated: November 17, 1982.

Russell Dickenson,
Director.

Major Components

Section I sets forth the philosophy of the National Park Service in dealing with the area of Native American Relationships and lists a broad range of legislation that will effect the interpretation and implementation of the proposed policy.

Section II explains the context of major terms used throughout the proposed policy.

Section III delineates conditions of access and use and cites pertinent existing policies and regulations. This section lists types of activities covered by this policy; circumstances under which activities, other than those listed, may be permitted; process for requesting use; appeal for denial of a permit; and minimal criteria for use.

Section IV discusses the practice of Native American Religion in National Park areas. The first paragraph quotes Public Law 95-341, the American Indian Religious Freedom Act. This section also addresses the question of the creation of additional rights or the changing of existing authorities and the use of controlled substances in ceremonies.

Circumstance under which natural resources may be taken including fish,

wildlife, plants, rocks and other natural resources, threatened or endangered species are outlined in part B of this section.

Part C—Burial and Cemetery Sites—discussed the treatment of interred human remains.

Part D of this section addresses the use of a known archeological site for traditional religious activity.

Section V is devoted to the involvement of and consultation with Native Americans in planning and resources management including the Service's responsibility for public participation and the recognition of individuals who are authorities on specific Native American tribes or groups. This section also includes a discussion of the protection of sacred sites.

Section VI is devoted to research and interpretation. The first part raises the issue of conflict which exists regarding anthropological/archeological studies and cites existing laws, guidelines and policy which will apply. It includes provision for consultative interaction with Native Americans in order to determine their views of a proposed project and to accommodate their views where practicable.

Part B of this section describes the acquisition, maintenance, utilization and disposition of artifacts. It includes standards for acquisition, maintenance and utilization; documentation of artifacts and specimens which cannot be acquired; inspection and study of a Service artifacts, specimens and catalog records by leaders of Native American tribe or group; and repatriation of artifacts and specimens.

Part C of this section covers the inclusion of Native Americans in the planning and development of park interpretive programs and General Management Plans and delineates certain management and planning responsibilities.

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The National Park Service, to the extent it is consistent with each park's legislated purpose and management objectives, shall develop and execute its programs in a manner that reflects informed awareness of, sensitivity to and respect for the traditions, cultural values and religious beliefs of Native American tribes or groups who have demonstrable ancestral ties to particular resources on lands within the National Park System.

I. INTRODUCTION

A. Philosophy

In many units of the National Park System (System), the National Park Service (Service) is specifically charged with the mission to interpret the cultural heritage of Native American tribes or groups. Many areas of the System were established to preserve and interpret cultural resources (sites, structures and objects) associated with past Native American cultures. In addition, within the boundaries of many units of the System, there are places and/or cultural resources which are historically associated with traditional or sacred values important to specific Native American tribes or groups. Service plans, programs and activities have the potential to affect such places or resources. It is the intent of this policy to assure that the Service applies its general regulations on access to and use of park lands and park resources in a balanced manner that does not unduly interfere with a Native American group's use of historically traditionally places or sacred sites located within the boundaries of a unit of the System.

B. Legislation

Numerous laws, Executive Orders and cooperative agreements provide for assistance, give use rights or define relationships between the Service and Native Americans. In addition to the National Park Service Organic Act of 1916, the following will have major affect on the interpretation and implementation of this policy:

Antiquities Act of 1906 (Pub. L. 209) as amended, Indian Reorganization Act of 1934 (25 USC 461 et seq.), Reservoir Salvage Act of 1960 (Pub. L. 86-523, as amended by Pub. L. 93-291), National Historic Preservation Act of 1966 (Pub. L. 89-665, as amended by Pub. L. 91-423,

Pub. L. 94-422, Pub. L. 94-458 and Pub. L. 96-515), National Environmental Policy Act of 1969 (Pub. L. 91-190), Alaska Native Claims Settlement Act of 1971 (Pub. L. 92-203), Endangered Species Act of 1973 (Pub. L. 93-205, as amended by Pub. L. 94-325, Pub. L. 94-359), Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93-638), The American Indian Religious Freedom Act of 1978 (Pub. L. 95-341), The Archeological Resources Protection Act of 1979 (Pub. L. 96-95), Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96-487), 16 USC 18f Management of Museum Properties, 18 U.S.C. 1163 Embezzlement and Theft From Indian Tribal Organizations, 25 CFR Indians, E.O. 11593—Protection and Enhancement of the Cultural Environment (1971), Cooperative Agreement between National Park Service and the Bureau of Indian Affairs relating to the disposal and utilization of surplus wildlife, (1963).

II. Explanation of Terms

For purposes of this policy, the term—"Native American" applies to American Indians, Eskimos and Aleuts in North America, and Native Hawaiians; and, as a matter of policy, to Native Samoans and Chamorros in Guam and in the Northern Marianas Islands.

"Tribe or Group" applies to any Nation, tribe, band or group of Native Americans recognized in statute or treaty by Federal or State governments; or any group of Native Americans who are identified by themselves and recognized by others as members of a named cultural unit which historically has shared linguistic, cultural, social (kinship) and related characteristics that distinguishes it ethnically from other Native American groups. This term does not apply to Native Americans of diverse cultural backgrounds (pan-tribal groups) who voluntarily associate together for some purpose or purposes.

"Sacred Site" applies to an area which holds special religious significance to any recognized group of Native Americans as defined above.

"Sacred Objects" applies to those objects of any recognized group of Native Americans as defined above which are essential in the performance of a sacred or religious ceremony such as medicine bundles.

"Traditionally" applies to beliefs, acts, practices, objects, and/or sites necessary for the perpetuation of a Native American culture and includes

those cultural practices that are so interrelated with religious activities that they cannot be separated therefrom.

III. Access and Use

A. Access

The Superintendent shall, consistent with the provisions of NPS Management Policies on Religious Activities (VII-18) and Public Assembly (VII-21-23), provide reasonable access to Native Americans for pursuit of religious and traditional activities. When appropriate, a permit in accordance with 36 CFR 2.21, Public Assemblies, Meetings, may be required.

B. Use

Native American tribes or groups shall be permitted to carry out traditional sacred activities at places situated within park areas provided that the sacred places historically have been used for such purposes, and further provided that such activities shall meet the following criteria:

Shall not unduly interfere with other public uses,

Shall not have a lasting or significant impact on park resources,

Shall be consistent with park management objectives,

Shall be in accordance with existing Federal, state and local laws, pertinent general regulations, and with park specific regulations as outlined in 36 CFR, Chapter 1.

The Superintendent may also permit other kinds of traditional pursuits of a secular nature by Native Americans in accordance with existing regulations and Service Management Policies. Performance of a traditional ceremony or the conduct of a religious activity shall not, of itself, constitute the creation of a new traditional or sacred place nor form the basis for prohibiting others from using such area thereafter.

Native Americans seeking to use park areas under this section of the policies should advise the Superintendent of the proposed activity orally or in writing. The request may be made by a representative of the tribal government, the Native American tribe or community, a local Native American traditional religious leader, or other authority governing or serving the concerned tribe or group.

Applicants may appeal the denial of a permit or any term thereof to the Regional Director if dissatisfied with a Superintendent's decision.

IV. Native American Traditional Activities

A. Practice of Native American Religion

Public Law 95-341, the American Indian Religious Freedom Act, enacted on August 11, 1978, states that "henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." This statute does not create additional rights or change existing authorities. Rather, it directs the exercise of discretion to accommodate native religious practice consistent with statutory management obligations.

Where ceremonies dictate the use of controlled substances, such use must be in accordance with existing Federal, State and local laws.

B. Taking of Natural Resources

1. *Fish.* The taking of fish by Native American tribes or groups for the pursuit of religious activities shall be permitted in areas of the National Park system in accordance with 36 CFR 2.13 and NPS Management Policies IV-8. The taking of fish for commercial or subsistence uses shall only be permitted where authorized by law or existing treaty rights.

2. *Wildlife.* The taking of wildlife by Native American tribes or groups for the pursuit of religious traditional or subsistence uses shall be permitted only in those areas and to the extent that such activity is authorized by law or existing treaty rights.

Disposal of surplus wildlife and carcasses shall continue as outlined in NPS Management Policies IV-10, with preference given to Native American groups.

3. *Plants, Rocks and Other Natural Resources.* Native American tribes or groups may, by written permission of the Superintendent, gather plants, rocks and other natural resources necessary for the pursuit of religious, traditional or subsistence uses so long as such activity will not adversely impact on the natural ecosystem.

4. *Threatened or Endangered Species.* In accordance with provisions of the Endangered Species Act of 1973, as amended, and NPS Management Policies, the gathering of plants or taking of animals of threatened or endangered species shall not be permitted, except in accordance with the exemption of this

and other laws or where provided by treaty.

Activity engaged in under this section shall comply with criteria detailed in Section III-B. *Use.* Gathering without a permit shall be in accordance with NPS Management Policies (VII-21).

C. Burial and Cemetery Sites

The treatment of interred human remains involves sensitive issues. Accordingly, the Service will consult with the representative of the appropriate Native American tribe or group concerning the proper treatment and disposition of human remains historically or prehistorically associated with the group when such human remains may be disturbed or are unknowingly encountered as a result of activities carried out on National Park System lands.

The objective of the consultation will be to acquire information upon which to make informed decisions concerning the treatment and/or disposition of the human remains taking into consideration and balancing and balancing the cultural and religious beliefs of the affected Native American tribe or group; scientific data requirement; public health requirements; state, county and local laws; Indian tribal laws; Department of the Interior policies; and Federal historic preservation law and policy.

To the extent practicable, Native American burial areas historically or prehistorically related to present day tribes or groups, whether or not formally plotted and enclosed as cemeteries, shall be located, identified and protected. Such burial areas shall not be disturbed, destroyed or archeologically investigated nor shall the integrity of their cultural or sacred values be compromised significantly except with a demonstrated showing of overriding public benefit directly related to the mission of the park in which the burial area is located. Actions affecting burial areas that are on or eligible for inclusion on the National Register of Historic Places shall comply with current procedures of the Advisory Council on Historic Preservation.

In determining the appropriate course of action to follow, park managers shall acquire the professional recommendations of Service archeologists and anthropologists.

D. Archeological Sites

Native American tribes or groups requesting to hold traditional religious activities at an archeological site at which their forebears likewise met for such purposes may be permitted to do so providing that criteria as set forth in

Section III—*ACCESS AND USE* of this chapter are satisfied and provided the integrity of the area will not be compromised.

V. Planning and Resources Management

A. Native American Involvement

Native American tribes or groups that have an historically demonstrable traditional or religious interest in places or resources within a unit of the System shall be consulted during the initial concept phase of any planning activity or proposal which would affect such places or resources. Consultations are to be held with those who represent the broadest constituencies among the appropriate Native American groups. This could frequently involve surrogates for the religious leaders. Separate meetings may be necessary in the case of deeply factionalized communities.

It is important to convey that Native American consultation is to be sought before there is a commitment to any particular alternative action, but that the final decision on issues is the sole responsibility of the Service.

B. Consultation

The Service shall maintain a public participation program which actively seeks the involvement of Native Americans in decisions regarding the planning and management of park areas. The Service shall recognize as an authority any Native American who demonstrates proficiency in knowledge and understanding of a specific tribal history and culture and who has been so designated as an authority by the concerned Native American tribe or group. Certification attesting to the credibility and competence of said individual may be given to the Superintendent verbally or in writing by the tribal government, community government, or other bodies governing or serving the tribe or community which the individual seeks to represent.

C. Sacred Sites

The Service shall establish and maintain consultative relationships with Native American groups who have historical ties to specific park lands to determine their concerns and goals for the protection and preservation of sacred sites and localities on park lands. To the extent consistent with legislated mandates and Service capabilities, the Service shall in a manner consistent with the goals of the appropriate Native American group provide for the protection of sacred sites.

Information on the location and character of sacred sites may be withheld from disclosure to the public

pursuant to the 1980 Amendments (94 Stat. 300, 16 USC 470w-3) to the National Historic Preservation Act of 1966 on the Archaeological Resources Protection Act of 1979 (93 Stat. 712, 16 USC 470hh).

VI. Research and Interpretation

A. Anthropological/Archeological Studies

There is conflict between contemporary society's perceived right to knowledge and understanding of current and past lifeways and the right of Native Americans to protect from desecration the body of sacred and esoteric knowledge concerning their religious and cultural values and practices. This conflict is further complicated by the fact that information acquired in the conduct of Service programs is in the public domain and by the Service's policy of acquiring and presenting accurate and factual interpretations of history and natural history. The Service will make every effort to resolve this conflict to best serve all parties involved, without compromising the basic requirement of scientifically accurate presentations.

Proposed anthropological/archeological studies shall comply with policy as outlined in Chapter V—*Cultural Resources Management and Preservation*. Additionally, when it is known or suspected that research projects will disturb burial or other sites historically or prehistorically related to present day Native American tribes or groups, the Service shall initiate consultation with the appropriate Native American group. The purpose of such consultation will be to determine the views of the group and to accommodate their reasonable and feasible request for special treatment of segments of the project, provided it will not seriously compromise the scientific values of the research. Archeological studies must comply with the Archaeological

Resources Protection Act of 1979 (PL-96-95) and associated guidelines.

B. Artifacts—Acquisition, Maintenance, Utilization and Disposition

The Service will acquire only collections having a legal and ethical pedigree. Collections will be acquired, maintained and utilized to preserve natural and cultural heritage, in accordance with existing laws and professional museum standards, and in the interest of preserving human dignity. If for any reason artifacts and specimens which are important to the purposes of the Service cannot be collected, the Service will endeavor to make a complete documentary record of those materials using printed, visual and audio media.

Leaders of a Native American tribe or group shall be able to inspect or study Service artifacts, specimens and catalog records which are pertinent to that tribe or group, consistent with policies for use and preservation.

Artifacts and specimens will be disposed of in accordance with 16 USC 18f, the *Museum Handbook*, other pertinent laws, Service policies and museum standards.

The Service will dispose of artifacts and specimens for the purpose of repatriation when it can be shown by a Native American tribe or group that the material is inalienable communal property of that tribe or group and when it has assurances that the material will be preserved in accordance with the Standards of the museum profession, unless adherence is demonstrated to be contrary to Pub. L. 95-3441—The American Indian Religious Freedom Act or other relevant laws. Requests for repatriation shall be considered only on a case by case basis.

In matters pertaining to acquisition, maintenance, utilization and disposition of materials from a particular Native American group, the Service will consult

with appropriate representatives of that group. If conflicts of interest arise between the Service and a Native America tribe or group, every effort will be made to negotiate a resolution.

C. Interpretation

In planning and developing the interpretive program of the park, attention must be given to the lifeways of the native inhabitants with due respect to their cultural achievements. Local Native Americans should play a major part in the planning, development and implementation of any program which speaks to their cultural history and traditions. The Service will seek to involve concerned Native Americans to the maximum extent possible in the development of General Management Plans and in interpretive programs which speak to their group history and prehistory. To accomplish this, planners and managers shall:

Actively seek to identify those among the local Native American tribes or groups who can help to ensure accuracy and lend appropriate perspective to interpretation of their traditions and cultural history;

Develop cooperative programs with colleges and other local institutions that will facilitate the development of strong interpretive programs in Native American history and prehistory;

Seek the active, ongoing participation of Native American in the facilitation and implementation of park programs. This may include the developing of signs and exhibits; the recounting of stories which figure in an interpretive exhibit; the appropriate display or non-display of cultural objects; the proper identification and protection of significant sites; and concerns of the contemporary Native American community.

[FR Doc. 82-32406 Filed 11-24-82; 8:45 am]

BILLING CODE 4310-01-M

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